United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL 76-7027

United States Court of Appeals
For the Second Circuit

HARRY LEWIS,
Plaintiff.

against

TELEPROMPTER CORP.,
Defendant.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
Plaintiff-Appellant.

against

TOUCHE ROSS & COMPANY,
Defendant-Appellee.

I. WALTON BADER,
Appellant.

against

TOUCHE ROSS & COMPANY,
Defendant-Appellee.

JOINT APPENDIX

BADER and BADER
Attorneys for Appellants
65 Court Street
White Plains, N.Y.

ROSENMAN, COLIN, etc.
Attorneys for Appellee
575 Madison Avenue
New York, N.Y.

UNITED STATES COURT OF APPEALS
FILED
MAR 30 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

DICK BAILEY PRINTERS, 290 Richmond Ave., Staten Island, N.Y. 10302
Telephone: (212) 447-5358

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	PAGES
Copies of Docket Entries in the United States District Court for the Southern District of New York	A-1 through A-24
Opinion of Hon. Richard Owen, United States District Judge Appealed from herein.	A-25 through A-42
Transcript of testimony taken at hearing held before Hon, Richard Owen USDJ	1 through 225
Order of District Court re Interrogatory answers.	226-227
Notice and Order of Voluntary Dismissal with respect to plaintiffs MICHAEL, FAGAN and INDEPENDENT INVESTOR PROTECTIVE LEAGUE	228
Notice and Order of Voluntary Dismissal under Rule 41(a)(1)(i) with respect to plaintiff RANDOLPH	229-230
Notice of Voluntary Dismissal with respect to plaintiffs MICHAEL and FAGAN	231
Notice of Rejection of Notice of Voluntary Dismissal with respect to plaintiffs MICHAEL and FAGAN	232-234
Motion to compel further answers to interrogatories and Exhibits attached	235-286
Affirmation in opposition to Motion to compel further answers to interrogatories	287-289
Reply affidavit on Motion to compel further answers to interrogatories	290-292
Memorandum decision of District Court requiring further answers to interrogatories	293

	PAGES
Order to Show Cause and Exhibits for an Order under Rule 37 by defendant TOUCHE ROSS & COMPANY with respect to answers to interrogatories served by plaintiffs	294-372
Affirmation of I.WALTON BADER in opposition to motion by defendant TOUCHE ROSS & COMPANY for Rule 37 Sanctions.	373-376
Supplemental Affidavit of LAWRENCE R. ENO in support of motion for Rule 37 sanctions	377-383
Motion by plaintiffs MICHAEL and FAGAN for extension of time to supply further answers to interrogatories	384-388A
Further answers to interrogatories of the plaintiff GARY MICHAEL	389-391
Reply Affidavit	392-404
Affidavit of service of NEVLING	405-406
Order to Show Cause with Stay	407-408
Answering Affidavit on LAWRENCE R. ENO on plaintiffs' Motion for Extension of Time	409-417
Affidavit of MERRILL SANDS	418-421
Answers to Interrogatories of plaintiff RANDOLPH	422-425
Affidavit of DOROTHY BLACKER	426-427
Notice of Hearing ordered by District Judge Owen	428-429
Order of Consolidation of Actions made by Judge MacMahon	430-435

	PAGES
Supplemental Affidavit of I.WALTON BADER.	436-446
Affidavit of MERRILL SANDS	447-451
Affirmation of I.WALTON BADER	452-463
Stipulation and Order of Substitution of Attorneys.	464-467
Affidavit of LAWRENCE R. ENO.	468-470
Order	471-472
Plaintiffs' Exhibit 1	473
Plaintiffs' Exhibit 1a	474
Plaintiffs' Exhibit 3	475
Defendant TOUCHE ROSS Exhibit A	476-544
Defendant TOUCHE ROSS Exhibit B	545-547
Defendant TOUCHE ROSS Exhibit C	548-551
Defendant TOUCHE ROSS Exhibit D	552-554
Defendant TOUCHE ROSS Exhibit E	555-557
Defendant TOUCHE ROSS Exhibit F	558-560
Defendant TOUCHE ROSS Exhibit G	561-578
Defendant TOUCHE ROSS Exhibit H	579-580
Defendant TOUCHE ROSS Exhibit I	581

	PAGE
Defendant TOUCHE ROSS Exhibit J	582
Defendant TOUCHE ROSS Exhibit K	583-585
Defendant TOUCHE ROSS Exhibit L	586-587
Defendant TOUCHE ROSS Exhibit M	588
Defendant TOUCHE ROSS Exhibit N	589
Defendant TOUCHE ROSS Exhibit O	590-594
Defendant TOUCHE ROSS Exhibit Q	595
Defendant TOUCHE ROSS Exhibit R	596
Court Exhibit S	597-598
Defendant TOUCHE ROSS Exhibit T	599
Letter of Feb. 1, 1975 to Hon. Lloyd F. MacMahon USDJ	600-601
Notice of Taking Testimony of defendant TOUCHE ROSS & COMPANY	602-604
Affidavit of MARTIN F. RANDOLPH, Jr.	605-606

RELATED WITH 73 Civ 4109, 73 Civ 4133, 73 Civ 4893, 73 Civ 3025, 74 Civ 3231 & C.

4341 CIVIL DOCKET

VOL. DIS. 1-23-76

UNITED STATES DISTRICT COURT

JUDGE MacMAHON

Jury demand date:

73 CIV. 3929

D. C. Form No. 106 Rev.

A-1

TITLE OF CASE	ATTORNEYS
HARRY LEWIS vs. TELEPROMPTER CORP.	For plaintiff: WOLF, POPPER, ROSS, WOLF & JONES 845 Third Avenue New York, N.Y. 10022 Plaza 9-4600
	For defendant: Shea Gould Climenko & Kramer 330 Madison Ave. NYC 10017 Mo 1-320 Anderson & Goldman 295 Madison Ave. NYC 10017 679-2400 (John R. Barrington) Paul Weiss Rifkind Wharton & Garrison 345 Park Ave. NYC 10022 (Defts Cooke, Bresnan, Wrather, Schaf Lewis, Lowe, Livingston & Simon)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		1/16/76		15	
			2/3/76			15
J.S. 6 mailed	Marshal					
Basis of Action: S. E. C. ACT of 1934 Rule 23 Allegation	Docket fee					
	Witness fees					
Action arose at:	Depositions					
		A				

UNITED STATES COURT OF APPEALS FILED FEB 3 1976 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

BEST COPY AVAILABLE

MAC MAHON,J. HARRY LEWIS -v- TELEPROMPTER CORP.

73 CIV. 392

A-2

DATE	PROCEEDINGS	Date Order Judgment
Sep.13-73	Filed complaint. Issued summons.	
Sep.13-73	Filed order appointing person to serve process. Albert D.Clark, Clerk.	
Sep.20-73	Filed summons and affdvt of person service of Albert Clark	
Oct.15-73	Filed ANSWER of deft. to complaint.	SGC&K
1-23-74	PRE-TRIAL CONFERENCE HELD BY	
11-8-74	Filed pltffs affdvt in opposition to counter proposed order of consolidati & in response to motion for reargument, etc.	
Nov.13-74	Filed affdvt of Stanley L. Kaufman in support of proposed order consolidating actions submitted by lead counsel.	
Nov.13-74	Filed pltffs in (73 Civ 4895) affdvt in support of consolidation order proposed by lead counsel.	
Nov.19-74	Filed pltffs affdvt re previously submitted proposed order of consolidation.	
Nov.19-74	Filed defts (Puckett & Richardson's) affdvt in opposition to proposed order for settlement by lead counsel for pltffs.	
Nov.19-74	Filed Order of consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895,74 Civ 3035,(74 Civ 3281 (for pretrial purposes only) & 74 Civ 4341.) A consolidated complt shall prepared & served by lead counsel re claims for relief, with exception of pltff (Bush), & such consol. complt to be served within thirty (30) days as indicated. Lead counsel to be Wolf Popper & Ross Wolf & Jones, as indicated. All motions to determine class action status pending in constituant actions are hereby withdrawn without prejudice & subject to renewal as provided. A copy of this Order shall be filed in each of the constituent actions. Defts to serve & file answers or move within(20) twenty days of service, with lead counsel on behalf of pltffs shall serve & file a motion to determine whether consolidated action shall be maintained as a class action. Present & former stockholders of Teleprompter Corp. are stayed from commencing or continuing any derivative actions, etc. Each pltff shall bear a proportionate share of all costs, etc. incurred by lead counsel in the consol. action.....MAC MAHON,J. m/n	
Nov.27-74	Filed Notice of Entry of Order entered 11-19-74.	
Dec.12-74	Filed Stip & Order extending to 1-3-75, time for deft (L.Tow) to move or answer Count two (2) of the Bush complt.....MAC MAHON,J.	
Dec.19-74	Filed notice that record on appeal in 74 Civ 3025 has been cerified & transmitted to the USCA.	
Dec.26-74	Filed Consolidated class action complt on behalf of all pltffs except pltffs in 73 Civ 4133, against defts named.	
Jan.7-75	Filed affdvt of Martin F. Randolph, Jr. pltff in (73 Civ 4133).	
Jan.7-75	Filed transcript of Nov. 13, 14, 1975.	
Jan.10-75	Filed Stip & Order extending to 1-17-75 for deft Leonard Tow, to answer re count 2 of the Bush complt.....MAC MAHON,J.	
Jan.16-75	Filed deft's (Schlafly) notice of motion to dismiss the second count of the complt. Ret. 1-31-75.	
Jan.16-75	Filed deft's (Schlafly) memo in support of motion to dismiss the second count of the complt.	
Jan.15-75	Filed Stip & Order extending to 2-15-75 deft (Touche Ross) to answer or make any motion re complt.....MAC MAHON,J.	
Jan.21-75	Filed Stip & Order extending to 1-29-75 for pltffs to move for a class action determination.....MAC MAHON,J.	
Jan.21-75	Filed Stip & Order extending to 2-15-75 for deft (Schlafly) to answer or move re complt.....MAC MAHON,J.	

//////////Con't on Page 32

A-3

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED OR EMOLUMENT RETURNED
Jan.21-75	Filed ANSWER of def't (L. Tow) to consolidated class action complt.	KLR&S
Jan.22-75	Filed Stip & Order extending to 2-15-75 for def't (Barrington) to move or plead re Consolidated Class Action Complt..... MAC MAHON,J.	
Jan.22-75	Filed Stip & Order extending to 2-15-75 for defts (A.E. Puckett & J.H. Richardson) to answer or move re consolidated class action complt. .....MAC MAHON,J.	
Jan.22-75	Filed Stip & Order extending to 2-15-75 for def't (Teleprompter) to move or answer re consolidated class action complt. ..... MAC MAHON,J.	
Jan.30-75	Filed pltffs affdvt in opposition to motions of defts (Puckett Richardson & Schlafly) to dismiss the second count of the (Bush) action, 74 Civ 3281.	
2-4-75	Filed ANSWERto complt by def't (Touche Ross). (amended complt)	RCKPF&E
2-3-75	Filed Stip & Order adj. to 2-18-75 for pltffs to move for a class action determination.....MAC MAHON,J.	
Feb.18-75	Filed ANSWER of defts Allen E. Puckett & John H. Richarson to consolidated class action complt.....	MTH&McC
Feb.18-75	Filed ANSWER of deft (Touche Ross) to consolidated class action complt.	RCKPF&E
Feb.19-75	Filed deft (Teleprompter) ANSWER to cosolidated class action complt.	SGC&K
Feb.19-75	Filed deft (Schlafly) ANSWER to consolidated class action complt.	HDLK&H
Feb.21-75	Filed ANSWER of(John R. Barrington) to consolidated class action complt.	A&G
Feb.25-75	Filed Stip & Order extending to 3-4-75 for pltffs to move for class action determination.	
Mar.7-75	Filed Stip & Order extending to 3-7-75 for certain defts to answer or move re Consolidated Class Action Complt..... MAC MAHON, J	
Mar.10-75	Filed affdvt & Order to withdraw as attys for certain defts... MAC MAHON,J m/n (Paul, Weiss, Rifkind, Wharton & Garrison) as substitution.	

//////// Con't on Page #3

D.C. 110

DATE	FILINGS—PROCEEDINGS	A-4	AMOUNT REPORTED IN EMOLUMENT RETURNS
ar.12-75	Filed Memo-Endorsement on motion of 1-16-75. The within motion to dismiss the second count is granted with leave to serve & file an amended complt within fifteen (15) days. See memo-end. of this date with respect to the motion of defts Puckett & Richardson to dismiss the secound count.....MAC MAHON,J m/n		
ar.12-75	Filed Memo-End. on motion of 12-30-74. The within motion to dismiss the second count is granted with leave to serve & file an amended complt within fifteen (15) days.....So Ordered, MAC MAHON,		
ar.12-75	Filed Stip & Order adjourning to 3-31-75 for pltffs to move for a class action determination.		
ar.20-75	Filed Stip & Order extending to 3-28-75 for certain defts to move or answer Consolidated Class Action Complt.....MAC MAHON,J		
pr.2-75	Filed pltffs affdvt & notice of motion for class action determination. Ret. 4-11-75		
pr.2-75	Filed pltffs memo of law in support of motion to maintain action as a class action.		
pr.4-75	Filed Stip & Order extending to 4-11-75 for certain defts to move or answer re consolidated class action complt.....MAC MAHON,J		
4-14-75	Filed Stip. & Order that the motion of pltff for a class action determination is adj. to 5-2-75 at 2:15PM., and that defts. Puckett and Richardson will serve pltff. with any opposing papers by 4-25-75....MacMahon,J.		
pr.23-75	Filed Stip & Order as to certain defts extending to 4-15-75 to move or answer re Consolidated Class Action Complt.....MAC MAHON,J		
or.25-75	Filed defts (Puckett & Richardson) affdvt in opposition to class action motion.		
or.25-75	Filed defts (Puckett & Richardson) memo of law in opposition to class action certification.		
2-75	Filed deft (Tow) affdvt in opposition to motion re maintaining consolidated action as a class action.		
y 6-75	Filed Stip & Order adjourning pltffs class action determination motion to 5-16-75.....MAC MAHON,J		
12-75	Filed deft (Schlafly) affdvt in opposition to pltffs motion for Class Action Certification.		
ay 13-75	Filed Stip & Order as to certain defts extending to 5-16-75 for them to answer or move re Consolidated Class Action Complt...MAC MAHON,J		
y 16-75	Filed deft (Touche Ross) affdvt re class action determination.		
y 16-75	Filed Stip & Order adjourning to 5-30-75 motion of pltff for a class action determination.....MAC MAHON,J		

A-5

DATE	PROCEEDINGS
ay 21-75	Filed Stip & Order as to certain defts that time for defts to move or answer Consolidated Class Action Complt be extended to 20 days following entry of Court's order decideing pltffs motion for a class determination.....MAC MAHON,J
May 28-75	Filed pltffs reply affdvt in support of class action motion.
May 28-75	Filed pltffs reply memo of law in support of motion for class action determination.
Jun.3-75	Filed Stip & Order adjourning to 6-6-75 motion of pltff for a class action determination.....MAC MAHON,J
Jun.6-75	Filed def't (Barrington) affdvt re pltffs motion for class action determination.
Jun.6-75	Filed def't (Schlafly) affdvt re class action motion.
Jun.6-75	Filed def't (Teleprompter) affdvt tr pltffs motion for class action determination.
Jun.6-75	Filed def't (Tow) affdvt in suport of pltffs motion for class action determination.
Jun.9-75	Filed certain defts affdvt who do not opposes pltffs class action motion.
Jun.16-75	Filed defts (Puckett & Richarson) affdvt re pending class action motion.
9-25-75	Filed Endorsement & Order on motion of 4-2-75. Pltffs satisfy the requirements of Rule 23, therefore, the Court grants their motion for class action status, subject to any further order as the facts may justify, & further grants pltffs request that notice be delayed to the class members until discovery is completed.....MAC MAHON,J m/n
1-13-76	Filed Opinion & Order #43703. Def't (Touch Ross) has moved for the imposition of sanctions against pltffs (IIPL, Randolph, Michael & Fagan) & their counsel. Sanctions are sought by virtue of circumstances disclosed in hearings held re the service on 9-3-74 of copies of purported answers of pltffs to Touche Ross interrogs dtd 11-1-73. For reasons indicated, given the conduct of Messrs Bader & Sands, I determine that pltff (IIPL & atty Bader) shall pay to the defs (Touche Ross) the actual expenses, including atty's fees, incurred by (TR) commencing with 9-6-74. Atty's for (TR) are to submit within 30 days in affdvt form a statement of services rendered commencing from 9-6-74, to which pltff (IIPL & Bader) may respond, so that I may reach an appropriate conclusion on this issue....So Ordered.....It is not inappropriate to observe that such conduct such as that engaged in by pltff's counsel herein cannot & will not be countenanced by the Court. I am, therefore, referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of atty's.....OWEN,J (Filed in 73 Civ 4133).
2-25-76	Filed pltffs request for production & inspection of documents.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By

D. C. 109 Criminal Continuation Sheet

LIDATED WITH 73 Civ 3929, 4133, 4895, 74 Civ 3025, (74 Civ 3281, pre trial only),

341

CIVIL DOCKET

UNITED STATES DISTRICT COURT

73 Civ. 4109

A-6

Jury demand date:

8-6-74- Pltf Jury Demand

D. C. Form No. 106 Rev.

JUDGE INGRAHAM

TITLE OF CASE	ATTORNEYS
REUBEN TUREK & HARRY SIGAFOOS 7-18-74 vs TELEPROMPTER CORP.	For plaintiff: Wolf Popper Ross Wolf & Jones 845 Third Ave. NY 10022 Pl 9-4600 For defendant: Shea Gould Climenko & Kramer 330 Madison Ave. NYC 10017 MU 1-3200

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
mailed X	Clerk		8/5/74	Wolf, F	15 —	
			9/23/74	Clerk		15 —
	Marshal	F				
	Docket fee					

73 Civ 4109 Reuben Turek vs Teleprompter Corp. 73 CIV. 4109

A-7

DATE	PROCEEDINGS	Date Ord Judgment
9-26-73	Filed complaint and issued summons.	
9-26-73	Filed order of Clark appointing Albert D. Clark to serve process.	
ct. 1-73	Filed affdvt. & service by an individual-served deft. by Peter Gross,Esq. 9-26-73-	
Oct.15-73	Filed ANSWER of deft. to complaint.	SGC&K
Nov.21-73	Filed pltffs Lewis & Turek's affdvt & notice of motion for class action determination. Ret. 11-23-73.	
Nov.21-73	Filed pltffs memo of law in support of motion.	
ov. 21-73	Filed pltff's request for production of documents.	
ov. 21-73	Filed pltff's notice to take deposition	
ec. 4-73	Filed stip. & order adjourning pltff's motion to 12-14-73--MacMahon,J.	
ec. 4-73	Filed stip. & order adjourning deft's deposition to 12-11-73-MacMahon,J.	
ec.14-73	Filed Stip and order extending time for deposition of Teleprompter until Dec.18-73. MacMAHON,J.	
Dec.14-73	Filed Stip and Order adjourning pltfs. motion for class action until Jan. 4-73. MacMAHON,J.	
ec. 28-73	Filed stip. & order adjourning pltff's motion to 1-18-74--MacMahon,J.	
ec. 28-73	Filed stip. & order extending deft's time to respond to pltff's request for production to 1-4-74--MacMahon,J.	
Jan.4-74	Filed stip and order adjourning deposition of deft. until Jan.9-74.MacMAHON,J.	
n. 15-74	Filed stip. & order adjourning deposition of deft. to 1-15-74--MacMahon,J.	
n. 15-74	Filed stip. & order extending deft's time to answer request for documents to 1-18-74--MacMahon,J.	
n. 15-74	Filed stip. & order adjourning pltff's motion to 1-25-74--MacMahon,J.	
an.23-74	Filed deft's affdvt in opposition to motion.	
an.23-74	Filed deft's memo in opposition to motion for class action determination.	
an.24-74	Filed pltfs. affdvt. in reply for class action.	
Jan.24-74	Filed pltfs. memo of law in support of motion for class action.	
n. 24-74	Filed stip. & order adjourning deposition of deft. to 2-1-74--MacMahon,J.	
an.24-74	Filed stip. & order extending deft's time to answer pltff's request for documents to 1-25-74--MacMahon,J.	
an. 28-74	Filed memo endorsed on pltffs' motion for class determination filed 11-21-73--Motion denied following argument without prejudice to renewal, on or before 4-26-74- and upon completion of discovery- so ordered--MacMahon,J.-mailed notice.	
an. 29-74	Filed deft's answer to request to produce	
eb. 14-74	Filed stip. & order adjourning pltff's deposition to 2-25-74--MacMahon,J.	
pr. 1-74	Filed stip. & order adjourning deft's deposition to 4-8-74-MacMahon,J.	
pr.23-74	Filed stip and order extending time for pltf. to make motion for class action until 4-26-74. MacMAHON,J.	
ay 14-74	Filed pltfs notice of deposition of deft.	
ay 20-74	Filed stip and order extending time for pltf. to move for class action until 6-14-74. MacMAHON,J.	
n.19-74	Filed Stip & Order extending time for defts to produce documents until 7-26-74, & time for pltff to make motion for class action determination is extended to 8--9-74.	
ul.16-74	Filed pltffs affdvt & notice of motion to amend the complaint. Ret.7-26-74.	
ul.16-74	Filed pltffs memo of law in support of motion.	
l.18-74	Filed Stip & Order that Harry Sigafoos shall be added as a party pltff in this action.....MAC MAHON,J.	
.9-74	Filed pltffs affdvt & notice of motion for class action determination. Ret. 8-6-74.	
9-74	Filed pltffs memo of law in support of motion.	
74	Filed Memo-End. on back of motion filed 7-16-74..Motion granted.So Ordered.MacMahon, J. m/n	

-C-

iv. 410[illegible] REUBEN TUREK, et ano -v- TELEPROMPTER A-8 73 Civ 410[illegible]

MAC MAHON,J

C. 116 Rev. Civ. Docket Continuation

DATE	PROCEEDINGS	Date Orde Judgment
[illegible]3.6-74	Filed pltffs amended complt., & demand for jury trial.	
[illegible]3.9-74	Filed Stip & Order adjourning to 9-6-74 pltffs motion for class action determination.....MAC MAHON,J.	
[illegible]3.12-74	Filed Stip & Order extending to 9-4-74 time for deft to answer or move re complt.....MAC MAHON,J.	
[illegible].6-74	Filed defts affdvt in opposition to motion for class action determination.	
[illegible].6-74	Filed defts memo in opposition to motion for class action determination.	
[illegible].5-74	Filed defts answer to amended complaint.	
[illegible]-[illegible]-7[illegible]	Filed Memo Endorsed on Pltff's motion filed 7-29-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered. - MacMAHON,J.	
Nov.19-7[illegible]	Filed Order of consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of order. m/n	

H

A TRUE COPY
RAYMOND F [illegible]

RELATED WITH 73 Civ 3929 73 Civ 4109 / DISM. 1-23-76 / 73 Civ 4133 / 73 Civ 4825, 74 Civ 3029,
74 Civ 3251 DTC & Cross-Docket 74 Civ 4341

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev. Jury Trial Demand

DOC MAHC
73 Civ. 4129

A-9

TITLE OF CASE	ATTORNEYS
INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected & in behalf of the Classes involved herein, GARY MICHAEL, MICHAEL FAGAN, & MARTIN F. RANDOLF, JR. 10-17-74 individually and as Class Representatives, and in behalf of all other parties similarly situated & circumstanced vs TELEPROMPTER CORP. TOUCHE, ROSS & COMPANY HERBERT SCHLAFLY, WILLIAM BRESLAN, MARVYN CARTON, "JOHN DOE" & "RICHARD ROW" being ficticious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts set forth herein, & 12-13-73 - SECURITIES & EXCHANGE COMMISSION	For plaintiff: Bader & Bader 274 Madison Ave. -- NY 10016 Le 2-6860 Arthur Kass Sub. Croton Falls, N.Y. 1-26-76 1/23/76 For defendant: Lawler Sterling & Kent (Deft. Schlafly) 500 Fifthe Ave. NYC 10036 736-7050

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		1/26/76	Pd. 416	15 -	15 -
			1/26/76	4,5,1-2		
J.S. 6 mailed ✓	Marshal					
Basis of Action: Violation S.E.C. ACTS	Docket fee					
	Witness fees					
Action arose at:	Depositions					

F

73 Civ. 4133 . INDEPENDENT INVESTOR PROTECTIVE LEAGUE -v- TELEPROMPTER CORP.,

73 CIV. 413

A-10

DATE	PROCEEDINGS	Date Cmd Judgment
9-26-73	Filed complaint and issued 20 & 60 day Summons.	
ct. 18-73	Filed stip. & order extending time of deft. Schlafly to answer to 12-18-73-Griesa,J.	
ct. 31-73	Filed pltff's' 1st set of interrogs.	
ov. 2-73	Filed stip. & order extending time of deft. Touche,Ross & Co. to answer to 12-18-73--Griesa,J.	
ov. 1-73	Filed pltff's' interrogs. to deft. Touche,Ross & Co. (first set.)	
ov. 1-73	Filed pltff's' interrogs. to deft. Teleprompter (first set.)	
ov. 7-73	Filed stip. & order extending time of deft. TelePrompTer Corp. to answer to 12-18-73--Griesa,J.	
ov. 7-73	Filed summons & return, served Teleprompter Corp. by Peter A. Gross-10-9-73-served Touche Ross & Co. by Miss M. Ryan-10-12-73.	
ov. 7-73	Filed summons & return, served SEC by Wm.D. Moran & by reg. mail to Atty. Gen'l 9-28-73--	
ov. 8-73	Filed additional summons & return, served William Bresnan-11-1-73--served Marvyn Carton-11-1-73	
ov. 8-73	Filed deft's(Touche) notice to take depositions of pltff. by an officer,etc.	
ov. 8-73	Filed deft's(Touche) interrogatories (1st set)	
Nov.13-73	Filed deft's (Schlafly) answers to interrogs. (1st set)	
v. 15-73	Filed pltff's notice to take deposition of Teleprompter Corp. by Merle Adams,	
ec. 4-73	Filed stip. & order extending time of deft. SEC to answer to 2-25-74--Griesa,J.	
ec. 4-73	Filed stip. & order extending time of deft. William Bresnan to answer to 1-10-74-Griesa,J.	
ec. 13-73	Filed memo endorsed on complaint--Defts. having moved orally at a PRE-TRIAL HEARING on Dec. 13-73--to dismiss the compl. for legal insufficiency, the motion is granted, subject to the condition pltffs are given until 12-27-73 to serve an amended complaint complying with the rules of pleading (Rule 9(b) of the FRCP) in providing a sufficient statement of the wrongs alleged. On consent, the action is dismissed as to the S.E.C. without leave to replead. So ordered--Griesa,J. mailed notice	
. 1-74	Filed AMENDED COMPLAINT	
n. 22-74	Mailed notice of reassignment.	
. 22-74	Filed stip. & order extending defts' time to answer to 2-15-74--Griesa,J.	
1/25/74	pre-trial before Owen J.	
2-74	Filed letter from Rosenman, Colin Kaye Petschek Freund & Emil dated 2/13/74 to Judge Owen.(Memo. End. Time to move to dismiss be extended for 30 days after answer served. Owen J. (mailed notice)	
il 10-74	Filed pltffs' answers to interrogs. of the deft. Touche Ross & Co. (First Set)	
2 6-74	Filed (Touche Ross & Co.) Memorandum of Law.	
2 6-74	Filed Deft. Touche Ross & Co., Notice of Motion & Supporting affidavit, re: Answers to interrogs. ret.8/16/74.	
Aug 13-74	Filed Stip & Order that the time for all defts. to answer to amended complaint is extended to 9/16/74. Owen J.	
g 16-74	Filed Memo. End. on motion dtd. 8/6/74. Motion granted in fats entirety & is to be complied within 20 days time. Owen J. (mailed notice)	
Aug 23-74	Filed pltff's. affirmation in opposition to motion to compel further answers to interrogs.	
Aug 22-74	Filed Deft. Touche Ross & Co. reply affidavit.	
Sep 10-74	Filed pltffs. Notice of Motion & supporting affidavit. Re: Further answers to interrogs. ret. 9/20/74.	
Sep 11-74	Filed Pltffs. Further Answers to 1st Set of Interrogs. of the deft. Touche Ross & Co.	
Sep 11-74	Filed Pltffs. Notice of deposition of deft. Touche Ross & Co. as indicated.	
Sep 11-74	Filed Pltffs. Further Answers to the First Interrogs of deft. Touche Ross & Co., by Pltff. Martin F. Randolph Jr.	

Cont'd. on page #3

DATE	PROCEEDINGS
Sep 13.74	Filed Pltff's. First interrogs. to Deft. Touche Ross & Company.
Sep. 16-74	Filed deft's (Touche) affdvt & Order to Show Cause for an order pursuant to Rule 37 to dismiss. Ret. 9-20-74. Defts. time to answer amended complaint is extended to 10 days after the determination of this motion--Owen, J.
Sep. 16-74	Filed deft's (Touche) memorandum in support of motion to dismiss.
Sep. 16-74	Filed deft's (Touche) supplemental affdvt in support of motion to dismiss.
Sep. 16-74	Filed affdvt of service of order to show cause & the papers on which it is based.
Sep. 17-74	Filed deft's affdvt in opposition to motion for an extension of time to answer interrogs.(by deft. Touche)
Sep. 17-74	Filed deft's(Touche) memorandum in opposition to motion for enlargement of time.
Sep. 18-74	Filed pltff's supplemental affdvt in opposition to defts. motion & in support of pltff's motion.
Sep.18-74	Filed stip & order extending deft's (Schlafly) time to answer to 10-30-74-Owen,J.
Sep. 19-74	Filed pltffs' supplemental answers to 1st set interrogs.
Sep 24.74	Filed affidavit of service by Steven J. Miller on 9/23/74 Order to Show Cause.
Sep 24.74	Filed Order to Show Cause, Orders that all discovery ad by pltffs. be & the same hereby is stayed, & the time for deft. Touche Ross & Co. to object is extended until determination of this motion. Owen, J. Ret. 9/26/74. 10/4/74.
Sep 26.74	Filed Deft. Touche Ross & Co. Notice of hearing to take d place on 1/11/74 in US Courthouse, Foley Square in room 2804.Etc.
Oct. 17-74	Filed notice of voluntary dismissal pursuant to Rule 41(a)(1)(i)FRCP of pltff. Martin F. Randolph, Jr. only--So Ordered--MacMahon, J.
Oct 22.74	Filed Deft. Touche Ross & Co. Notice of Vol. of pltffs. Gary Michael & Michael Fagan dtd. 10/17/74 deems the purported vol. dismissal.
Nov.19-74	Filed Order of Consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of Order. m/n
[illegible]	Filed transcript of record of proceedings, dated Nov 9,1974
1-13-76	Filed Opinion & Order #43708. Deft Touch Ross has moved for the imposition of sanctions against pltffs (IIPL, Randolph, Michael Fagan) & their counsel. Sanctions are sought by virtue of circumstances disclosed in hearings held re the to the service on 9-3-74 of copies of purported answers of pltffs to Touch Ross interrogs dtd 11-1-73. For reasons, indicated, given the conduct of Messrs Bader & Sands, I determine that pltff (IILP & atty Bader shall pay to the deft (Touche Ross) the actual expenses, including atty's fees, incurred by (TR) commencing with 9-6-74. Atty's for (TR) are to submit within 30 days in affdvt form a statement of services rendered commencing from 9-6-74, to which pltff (IIPL & Bader) may respond, so that I may reach an appropriate conclusion on this issue. So Ordered.....It is not inappropria to observe that conduct such as that engaged in by pltff's counsel herein cannot & will not be countenanced by the Court. I am, therfore, referring this record for further consideratio pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of atty's.....OWEN,J m/n
2-23-76	Filed Order & Notice of Voluntary Dismissal pursuant to Rule 41(a) as against all defts since there has not been any Answer filed by any deft & no motion for summary judgment...So Ordered, MAC MAHON,J

Con't on Page #4

73 Civ 4133 INDEPENDENT INVESTOR , et al -v- TELEPROMTER CORP., et al

A-12

DATE	PROCEEDINGS
1-23-76	Filed Notice of Appeal to the USCA by pltffs Independent Investor Protective League & Martin R. Randolph, Jr., & Walton Bader, individually, from each & every part of a certain final Opinion & Order by Judge Owen, entered 1-13-76, dismissing the action as to deft Touche Ross & Co., & awarding expenses & atty's fees against the pltff Independent Investor Protective League & I. Walton Bader, Indiv. Copies mailed to: Rosenman, Colin, Kaye, Petschek, Frend & Emil 575 Madison Ave., New York, N.Y.....Shea, Gould, Climenko, & Kramer, 330 Madison Ave., New York, N.Y.....Lawler, Sterling & Kent, 460 Park Ave., New York, N.Y.
1-26-76	Filed Stip & Order of substitution of atty's. Arthur Kass for I. Walton Bader.

A TRUE COPY
RAYMOND F. BURGHARDT
By [signature]

Related action - see 73 29.

JUDGE MAC MAHON

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date: by pltff 7-16-74

J. C. Form No. 106 Rev. - CLASS ACTION:

A-13

TITLE OF CASE

HYMAN RADZANOWER,

VS.

TOUCHE ROSS & CO.
TELEMPROMPTER CORPORATION,
JACK K. COOKE,
RAYMOND P. SHAFER,
W.J. JENSNAN,
H.J. SCHLAFLY,
LEONARD TOW,
R.S. TODD, JR.
B.P. SIMON,
J.B. GREEN,
L.H. READ,
R.G. WILSON,
H. E. FLAHERTY
B.D. FISCHMAN,
BERLE ADAMS,
MARVIN CARTON,
R.F. LEWIS
P.L. LOWE,
CHARLES LUCKMAN,
M.D. MITCHELL,
A.E. PUCKETT,
J. H. RICHARDSON,
M.E. LIVINGSTON
JACK WRATHER, AND

10-22-74 FIRST NATIONAL BANK OF BOSTON.

ATTORNEYS

For plaintiff:

IRA JAY SANDS, & Sidney A. Flores
~~101 Seventh Avenue, N.Y.C. 10035~~
~~(212) 243-3500~~
515 Madison Ave. Suite 333 NYC 10022
688-4900

For defendant:

ROSEMAN COLIN KAYE PETSCHEK FREUND & EMIL
575 Madison Ave-NYC 10022 (MU 8-7800)
(for deft. Touche, Ross & Co.)

SHEA GOULD CLIMENKO & KRAMER
330 Madison Ave-NYC 10017
(for deft. Teleprompter Corp)

STATISTICAL RECORD	COSTS
J.S. 5 mailed X	Clerk
J.S. 6 mailed	Marshal
Basis of Action: S.E.C. ACT. 1934	Docket fee
	Witness fees
Action arose at:	Depositions

DATE	NAME OR RECEIPT NO	REC	DISB.
7/16/74	Cashier G	15	
7/18/74	Gerstel		15
	Sheriff	5	
	Mileage		5

-M-

A-14

DATE	PROCEEDINGS	Date Order or Judgment
Jul 16-74	Filed Complaint. Issued Summons.	
Jul 17-74	Filed order that Fred Berman of 701 Seventh Avenue, is designated to serve the summons and complaint in the above entitled action, Clerk.	
July 25-74	Filed pltff's affdvt. of Ira Jay Sands and notice of motion for an order for class determination. Ret. 8-6-74.	
July 25-74	Filed pltff's memorandum of law in support of motion pursuant to Rule 23, FRCP	
Jul. 30-74	Filed stip & order extending deft. Touche Ross & Co's time to answer to 9-4-74. So ordered- CANNELLA, J.	
Aug. 2-74	Filed deft. Touche, Ross & Co.'s notice of taking deposition of pltff. on 8-13-74	
Aug. 2-74	Filed deft. Touche, Ross &Co's interrogs., first set.	
Aug. 5-74	Filed stip & order extending deft. Teleprompter Corp's time to answer from 8-4-74 to 9-4-74. So ordered- CANNELLA, J.	
Aug. 5-74	Filed stip & order that pltff's motion for class determination presently retnble on 8-6-74 is adjourned to 9-6-74. So ordered- CANNELLA, J.	
July 25-74	Filed summons and affdvts. of service of Fred Berman of summons and complaint on defts. T.Ross &co. on 7-17-74, Teleprompter Corp. on 7-17-74-B.D. Fishman & Co both &c	
Aug. 13-74	Filed affdvt. of Fred Berman dated 7-17-74 of copy of summons and complaint on Barry Simon.	
Aug. 13-74	Filed pltff's notice of taking deposition of deft. Barry P. Simon, etc. on 8-19-7	
Aug. 13-74	Filed pltff's notice to produce documents.	
Aug. 15-74	Filed pltff's notice of taking depositions of the named defts. on the dates indicated.	
Aug. 15-74	Filed affdvt. of service of Fred Berman of summons & complaint on Marvyn Carton on 7-17-74.	
Aug. 19-74	Filed deft. Touche Ross & Co's affdvt. of Lawrence R. Eno and notice of motion for an order staying the depositions of all defts. by pltff, including the deposition of deft.Touche Ross & Co., etc. as indicated. Ret. 9-3-74	
Aug. 20-74	Filed deft. The First National Bank of Boston affdvt. of Philip A. Shaver and notice of motion for an order to dismiss as against said deft. Ret. 8-29-74	
Aug. 20-74	Filed memorandum of law in support of the motion of deft. The First National Bank of Boston to dismiss.	
Aug. 20-74	Filed pltff's notice of taking deposition of Marvyn Carton on 8-24-74	
Aug. 26-74	Filed pltff's affdvt. of Ira Jay Sands and notice of motion for an order directing the manner in which certain defts. in this action are to be served with the summons and complaint. Ret. 9-4-74.	
Aug. 28-74	Filed affdvt. of service of Fred Berman of a copy of the summons and complaint with Barry Simon on 7-17-74 and by service of mail to: Hubert J. Schlafly Hugh E. Flaherty Allen E. Puckett John H. Richardson	
Sep. 3-74	Filed deft. Teleprompter Corp's affdvt. and show cause order to dismiss complaint and for protective order with a stay. Ret. 9-10-74 at 10:00 a.m. CONNER, J.	
Sep. 3-74	Filed Memorandum of deft. Teleprompter Corp. in support of motions to dismiss complaint and for protective order and application for stay of discovery.	
Sep. 3-74	Filed deft. Touche Ross &Co.'s answering affdvt. of Lawrence R. Eno	
Sep. 3-74	Filed stip & order extending the time for deft. Hubert J. Schlafly to answer to 9-24-74. So ordered- CANNELLA, J.	
Sep. 3-74	Filed stip & order-that deft. The First National Bank of Boston's motion to dismiss retnble on 8-29-74 is adjourned to 9-13-74. So ordered- CANNELLA, J.	
Sep. 4-74	Filed memo endorsed on motion filed 8-26-74. Motion denied without prejudice to renewal upon proper papers, pltff. having failed to comply with General Rule 9 of this court. So ordered- CANNELLA, J. (m/n)	

(CONT'D PAGE #3)

BEST COPY AVAILABLE

OLIDATED ACTION - SEE 73 Civ 3929 — 74 CIV. 3025
V. 3025-- HYMAN RADZANOWER -vs- TOUCHE ROSS & CO., et al

CIVIL DOCKET (PAGE # 3) MACMAHON, J. [redacted] A-15

DATE	FILINGS--PROCEEDINGS	AMOUNTS REPORTED OR ENDORSEMENTS RETURNED
Sep. 4-74	Filed summons and return-served the following:	
	First National Bank of Boston by H. James Williams, Jr. on 7-29-74	
	Raymond P. Shafer on 8-19-74	
	Jack Wrather by Pamela Smith on 8-8-74	
Sep. 5-74	Filed deft. Touche Ross & Co's notice of motion for an order, pursuant to Rules 12 (b) and 9(b) FRCP, dismissing the complaint. Ret. 9-16-74	
Sep. 5-74	Filed memorandum of deft. Touche Ross & Co. in support of motion to dismiss complaint.	
Sep. 5-74	Filed affdvt. of Lawrence R. Eno on behalf of deft. Touche Ross & Co. on the motion to dismiss the complaint by deft. Teleprompter Corp.	
Sep. 5-74	Filed deft. Touche Ross & Co.'s supplemental answering affdvt. of Lawrence R. Eno on pltff's class action motion.	
Sep. 5-74	Filed deft. Teleprompter Corp. affdvt. of Edwin J. Buckingham, III in response to pltff's motion for class action determination.	
Sept.9-74	Filed stip. & order that all discovery of deft First Nat'l Bank of Boston is adjd until 10 days after date of entry of an order determining the motion ofR First Nat'l to dismiss.....Cannella,J.	
Sep11-74	Filed response and objections of deft Touche Ross & Co. to pltffs Notice to produce documents.	
Sep12-74	Filed Affidavit & Notice of Motion by deft. Hugert J. Schlafly for an order dismissing the complaint for failure to st te a claim upon which relief can be grante etc. as indicated rtble before C nnella J. on 9-20-74.	
Sep12-74	Filed memo in support of motion to dismiss.	
Sep 12-74	Filed Endorsement & order that the within order of Conner, J. is hereby modified and amended so as to stay all discovery by pltff until deft. Teleprompter Corps motion to dismiss the complaint herein is heard and determindd. Cannella, J.	
Sep13-74	Filed Notice of Pearance and Demand that defts. Allen E. Puckett and John H. Richardson hereby appear in this action and that the firm of Milbank, Tweed, adley, & cCloy appear as attys for same, and that all papers etc. be served on them.	
Sep12-74	Filed Endorsement & Order: Pltffs applicattion for the entry of a default judgment denied against deft Barry P. Simon. The Cpurt exercises its discretion to renewal at such time as pltff has shown a meritorious basis for this law suit. Application denied withoyt prejudice, Cannella, J. M/N.	
Sep13-74	Filed stip & order that the date onwhich defts. Allen E. Puckett & John H. Rochardson must answer etc, is extended to 9-20-74.	
Sep16-74	Filed s tip & order that and agreed by and between counsel, that the return date of all motions now pending before the Court is extended to 9-20-74 inclusive,Cannel	

74civ. 3025 Cannella, J. MAC MAHON

A-16

DATE	PROCEEDINGS	AMOUNT
Sep19-74	Filed deft's (Ma rvyn Carton) Notice of Joinder in motion to dismiss the complaint.	
Sep19-74	Filed pltffs affidavit in opposition to motion of First National Bank of Boston to dismiss.	
Sep19-74	Filed pltffs memorandum of law in opposition to the motion by deft to dismiss.	
Sep20-74	Filed Reply Memorandum of deft the First National Bank of Boston, insupport of its motion to dismiss.	
Sept.23-74	Filed affdvt. of Ira Jay Sands in opposition to motion to dismiss the complaint of deft's Touche, Ross & Co. Teleprompter Corp. and H.J.Schlafly.	
Sept.23-74	Filed memorandum of law of pltff in opposition to motions to dismiss.	
Sept.23-74	Filed notice of motion of deft's Puckett and Richardson for an order dismissing the complaint...Ret. 9-30-74	
Sept.23-74	Filed memo of deft's Puckett and Richardson in support of above motion.	
Sep20-74	Filed stip & Order that the return date of various motions pending before the Court (Teleprompter Corp.) are adjourned to 9-20-74. Cannella, J.	
Sep20-74	Filed stip & Order that the return date of various motion now pending etc, (deft First National Bank of Boston, are adjourned to 9-20-74. Cannella, J.	
Sep20-74	Filed Affidavit of Service, by Steven L. Kroleski.	
ep 20 74	Filed Pltff's response to Interrogs.	
Sept.24-74	Filed pltff's notice of motion for order directing service summons and complaint. Ret. 9-25-74	
Sept.24-74	Filed pltff's memorandum in support of above motion.	
Sept.24-74	Filed additional affdvt. in opposition by pltff to motion to dismiss by First Nat'l Bank of Boston	
Sept.25-74	Filed reply memo in support of motion of deft H.J.Schlafly to dismiss complaint.	
Sept. 26-74	Filed notice of reassign ment to Judge Mac Mahon.	
Sep.25-74	Filed Stip & Order that reply papers on deft Touche Ross's motion to dismiss the complt be served by 10-7-74.	
Oct.1-74	Filed deft (Puckett & Richardson's) affdvt. in opposition to pltffs class action motion.	
Oct 3-74	Filed Pltff's affidavit in opposition to Defts Puckett & Richardson's motion to dismiss the complaint as to them.	
Oct 3-74	Filed Memo of Law Of Pltff in opposition to motions by defts to dismis	
Oct.3-74	Filed pltffs response to deft's interrogs.	
Oct.4-74	Filed deft (Touche Ross) reply affdvt in motion to dismiss.	
Oct.4-74	Filed deft (Touche Ross) reply memo in support of motion to dismiss the compl't.	

A-17

DATE	FILINGS--PROCEEDINGS
Oct.7-74	Filed deft (Touche) affdvt & notice of motion compelling pltff to respond to interrogs dated 8-2-74. Ret. 10-11-74
Oct.7-74	Filed defts memo of law in support of motion to compel answers.
Oct.9-74	Filed defts (Shafer & Weather) affdvt in support of motion to dismiss the complt.
Oct.22-74	Filed Memo-Endorsed on motion of 8-20-74. Deft First Nat'l Bank of Boston's motion to dismiss action on ground of improper venue is granted.....So Ordered, MAC MAHON,J. m/n
Nov 15-74	Filed Pltff's Notice of Appeal to USCAfrom an Order dated 10-21-74 dismissing this action against deft. First National Bank.....Notice Mailed 11-19-74. to: Debevoise, Plimpton, Lyons &Gates of 299 Park Ave.,NYC.
Nov 19-74	Filed Memo-End on back of motion filed 9-5-74..Motion withdrawn at pre-trial conference held on 10-4-74..So Ordered. MacMahon, J.
11-19-74	File Memo Endorsed on Deft's Touche Ross & Co filed 8-19-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered--MacMAHON,J.
11-19-74	Filed Memo Endorsed on Pltff's motion filed 9-24-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered -MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft's. Puckett & Richardson. filed 9-23-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered. Macmahon,j.
11-19-74	Filed Memo Endorsed on Pltff's motion filed 7-25-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered - MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft. Hubert J. Schlafly motion filed 9-12-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered. MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft. Marvyn Carton motion filed 9-19-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered -MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft. Touche Ross & Co.. motion filed 10-7-74. Motion withdrawn at pre-trial conference held on 10-4-74. SoOrdered. MacMAHON,J.
Nov.19-74	Filed Order of Consolidation of 73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of order. m/n
Dec.16-74	Filed notice that original record on appeal has been certified & transmitted to the USCA.

BEST COPY AVAILABLE

DATE	PROCEEDINGS	A-18

Dec.18-74 : OCT 4-74.

Mar.6-75 Filed Amended endorsement & final judgment as to deft First Nat'l Bank of Boston, & the complt is hereby dismissed.....MAC MAHON,J Judgment Ent. 3-6-75, Clerk. m/b

Mar.6-75 Filed Stip & Order that endorsement of J. MacMahon of 10-21-74 be amended, to contain a certificate as required under Rule 54(b) & judgment ent. Pltffs notice of appeal deemed amended to include appeal from amended endorsement & final judgment. Amended endorsement & final judgment as entered & this Stip. shall be incorporated & deemed part of the Joint Appendix now on appeal USCA #74-2538, with same effect as if originally set forth therin.....So Ordered, MAC MAHON,J

Mar.24-75 Filed notice that second supplemental record on appeal has been certified & transmitted to the USCA.

May 29-75 Filed True copy of order from USCA that order of USDC is affirmed with costs to be taxed against the appellant....Clerk. Judg'mt Ent. 6-2-75. (No bill of costs or stat4ment attached)

6-27-75 Entered True Copy of statement of costs in the sum of $40.00 attached to Judgment #75,560. Judgment docketed on 6-27-75 on true copy of mandate of 5-29-75. M/N

8-27-75 Filed notice by pltffs atty of change of firm name & address, to : Ira Jay Sands Sidney A. Florea, 515 Madison Ave., Suite 333m NYC 10022 68804900.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

R-

[redacted] CIV 489-1 CIVIL DOCKET [redacted] JUDGE [redacted]

UNITED STATES DISTRICT COURT

Jury demand date:
11-14-73 by pltff.

73 CIV. 489

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
PHILIP HELLER AND WILMA P. GOTTLIEB ON THEIR OWN BEHALF AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, VS. TELEPROMPTER CORP., JACK KENT COOKE, W.J. BRESNAN, AND J.D. WRATHER, JR.	For plaintiff: POMERANTZ, LEVY HAUDEK & BLOCK 295 Madison Avenue, N.Y. C. 10017 LE 2-4800 For defendant: (TELEPROMPTER CORP.) SHEA GOULD CLIMENKO & KRAMER. 330 Madison Avenue, N.Y.C. 10017 MO 1-3200 FOR DEFT. (WILLIAM J. BRESNAN) ROSENMAN [illegible] 575 Fifth Avenue, N.Y. 3 & KLEIMAN - 105-1500 TRUBIN SILLCOCKS EDELMAN & KNAPP 375 Park Ave-NYC 10022 (PL 9-5400) (for defts. Cooke & Wrather, Jr.) MARKEWICH ROSENHAUS MARKEWICH & FRIED 35[illegible] Fifth Ave-NYC 10001 (565-1500) (for deft. William J. Bresnan)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed X	Clerk		11/14/73 12/13/73	Pomerantz 14572	15 — —
J.S. 6 mailed	Marshal				
Basis of Action: S.E.C. ACT, 1934	Docket fee				
	Witness fees				
Action arose at:	Depositions				
		—5—			

PHILIP HELLER,

(PAGE #2)

73 CIV. 489

A-20

DATE	PROCEEDINGS	Date Order or Judgment Note
Nov. 29-73	Filed Complaint. Issued Summons.	
	Filed pltff's affdvt. and notice of motion for an order determining that this action can be maintained as a class action. Ret. 11-30-73.	
Nov. 30-73	Filed stip and order adjourning pltff's motion for class action determination to 12-14-73. So ordered- CANNELLA, J.	
Dec. 7-73	Filed stip & order extending deft's Teleprompter Corp. time to answer complaint to 12-18-73. So ordered- CANNELLA, J.	
Dec. 6-73	Filed affdvt. of service by marshal on notice of motion & brief upon Jack Kent Cooke by James Lacher on 11-26-73	
Dec. 6-73	Filed summons and return- served the following:	
	Teleprompter Corp. by Peter B. Cross on 11-16-73	
	Jack Kent Cooke by James Lacher on 11-26-73	
	W.J. Bresnan on 11-29-73	
	J.C. Wrather, Jr. by J.C. Wrather, Jr. a/k/a J.D. Wrather, Jr. on 11-21-73	
Dec. 12-73	Filed stip & order adjourning pltff's motion for class action determination to 1-4-74. So ordered- CANNELLA, J.	
Dec. 20-73	Filed stip & order extending deft. Teleprompter Corp's time to answer complaint to 1-4-74. So ordered- CANNELLA, J.	
Jan. 3-74	Filed stip & order adjourning pltffs' motion for class action determination to 1-11-74. So ordered- CANNELLA, J.	
Jan. 11-74	Filed stip & order extending deft. Teleprompter Corp's time to answer to 1-25-74. So ordered- CANNELLA, J.	
Jan. 14-74	Filed stip & order extending deft. W.J. Bresnan's time to answer complaint to 1-25-74. So ordered-CANNELLA, J.	
Jan.18-74	Filed stip & order adjourning pltff's motion for class action determination to 1-25-74. So ordered- CANNELLA, J.	
Jan23-74	Filed Affidavit of Martin I. Shelton (atty for deft. Teleprompter Corp.)	
Jan23-74	Filed memorandum of deft Teleprompter in opposition to pltffs motion for Class action determination.	
Jan24-74	Filed pltffs reply memorandum in support of their motion for class action determination.	
Jan.24-74	Filed stip & order extending deft. Teleprompter Corp's time to answer to 2-8-74. So ordered- CANNELLA, J.	
Jan.24-74	Filed stip & order extending defts. Jack Kent Cooke and J.D. Wrather, Jr.'s time to answer to 2-25-74. So ordered- CANNELLA, J.	
Jan.28-74	Filed deft's William J. Bresnan affdvt. of Robert Markevich in opposition to pltff's motions.	
Feb1-74	Filed stip & order- that pltffs' motion for a class action determination be held in abeyance, as indicated. So ordered- CANNELLA, J.	
Feb 7-74	Filed pltffs' memorandum of law in support of their motion for a class action determination.	
Feb 8-74	Filed stip & order extending deft. Teleprompter Corp's time to answer to 2-25-74. So ordered- CANNELLA, J.	
Feb 20-74	Filed pltffs' interrogs.	
Feb 25-74	Filed ANSWER of deft Teleprompter Corporation to the complaint.	
Feb 25-74	Filed ANSWER of deft. William J. Bresnan to the complaint.	
Mar 12-74	Filed ANSWER of defts. Jack Kent Cooke and J.D. Wrather, Jr.	
Mar 25-74	Pre-trial conference held- Jacobs, U.S. Mag.	
Mar 26-74	Filed pltffs' request to produce.	
Mar 27-74	Filed pltffs' Teleprompter Corp's response to request to produce.	
Mar 27-74	Filed defts' answers and objections to interrogs.	
Mar 27-74	Filed defts. Jack Kent Cooke and J.D. Wrather, Jr's response to request to produce.	
Mar 28-74	Filed pltffs' affdvt. of A. Arnold Gershon and notice of motion for an order allowing pltffs, to serve and file their proposed amended complaint, a copy which is annexed as indicated. Ret. 7-29-74.	

CONT'D ON PAGE 3

CIVIL DOCKET (PAGE # 3) MAC MAHON, J. [redacted] A-21

DATE	FILINGS--PROCEEDINGS	
July 24-74	Filed pltff's memorandum in support of their motion to amend the complaint.	
July 24-74	Filed defts' answers and objections to interrogs.	
July 30-74	Filed deft. William J. Bresnan's response to request to produce.	
Jul. 30-74	Filed memo endorsed on motion filed 7-24-74. Pltff's within motion for an order granting leave to file and serve an amended complaint is granted. Motion granted. So ordered- CANNELLA, J. (m/n)	
Jul. 31-74	Filed defts' answers and objections to pltffs' interrogs.	
Aug. 2-74	Filed amended complaint.	
Aug. 28-74	Filed defts' answers and objections to interrogs.	
Sep. 10-74	Filed deft's (Teleprompter Corp.) ANSWER to AMENDED COMPLAINT.	SGC-J
Sep16-74	Filed pltffs Notice to take depositions of the defts indicated.	
Sep19-74	Filed Amended ANSWER by defts, J Cooke and J.D. WratherJr to the amended complaint.	TSM
Sep26-74	Case reassigned to Judge Mac Mahon.	
Oct.2-74	Filed Amended ANSWER of deft (Bresnan) to the complt.	MRM
Oct.9-74	Filed Memo-End. on unsigned Stip. This action has been ordered to be consolidated with 73 Civ 3929 for the purpose of unifying all procedures.....MAC MAHON,J.	
Nov. 19-74	Filed Order of Consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See Entry in 73 Civ 3929. m/n	

74 CIV 3281 [illegible] Computer Corp., et al 74 CIV 3281

CIVIL DOCKET MAC MAHON

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTER'S EMOLUMENTS
	ADDITIONAL ATTORNEYS A-Z2			
	Trubin Silicocks Edelman & Knapp 375 Park Ave. NYC 10022 PL 9-5400 (Defts Jack K. Cooke, Jack D. Wrather, Ralph F. Lewis, Philip L. Lowe, Raymond P. Shafer & William J. Bresnan)			
	Milbank Tweed Hadley & McCloy 1 Chase Manhattan Plaza, NYC 10005 422-2660 (Defts Allen E. Puckett & John H. Richardson)			
	Anderson & Goldman 295 Madison Ave. NYC 10017 679-2400 (Deft John R. Barrington)			
	D. Barry Morris, Esq. Hall Dickler & Howley 460 Park Ave., NYC 10022 (Deft Hubert J. Schlafly)			

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

V-

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE MAC MAHON

A-23

Jury demand date:

74 CV. 3281

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
STEPHEN BUSH, as Admtr. C/T/A ALEXANDER BUSH, dec'd. Plaintiff -against- TELEPROMPTER CORPORATION, TOUCHE, ROSS & CO., JACK K. COOKE, RAYMOND P. SHAFER, WILLIAM J. BRESNAN, BERLE ADAMS, MARVIN CARTON, RALPH F. LEWIS, PHILIP L. LOWE, CHARLES LUCKMAN, MAURICE B. MITCHELL, ALLEN E. PUCKETT, JOHN H. RICHARDSON, MONTE E. LIVINGSTON, JACK D. WRATHER, J. M. GARTENLAUB, J. R. BARRINGTON, LEONARD TOW, ROBERT C. TODD, JR., LESLIE H. READ, ROGER G. WILSON, HUGH F. FLAHERTY, BERNARD D. FISCHMAN, HUBERT J. SCHLAFLY, Defendants	For plaintiff: Kaufman, Taylor, Kimmel & Miller, 41 E. 1 St. N.Y.C. 10017 MU2-2983 For defendant: Rosenman Colin Kaye Petchek Freund E 575 Madison Ave. NYC 10022 Mu 3-78 Holtzmann Wise & Shepard 30 Broad St. NYC 10004 747-5500 (Marvyn Carton) Shea Gould Climenko & Kramer 330 Madison Ave. NYC 10017 Mo 1-3 (Teleprompter) Katz Leavy Rosensweig & Sindle 437 Madison Ave. NYC 10022 758-2500 (Leonard Tow)

-W-

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
Mailed X	Clerk		2/20/74	Kaufman T	15 —	
			2/21/74	15 Streat		15 —
	Marshal					

74 CIV 3281 STEPHEN BUSH, et ano. VS. TELEPROMPTER CORP., et al — 74 CIV

JUDGE MAC MAHON

74 CIV. 3281

A-24

DATE	PROCEEDINGS
ul 30-74	Filed complaint & issued summons.
ug.12-74	Filed Stip & Order extending to 9-4-74 time for deft to move or answer the complt.....MAC MAHON, J.
ug.13-74	Filed deft (Touche Ross) interrogs to pltff. (First set)
ug.13-74	Filed deft (Touche Ross) notice to take deposition of pltff.
ug.15-74	Filed Stip & Order adjouring to 9-19-74 deposition of pltff, & time for deft (Touche Ross) to answer complt be adjourned to 9-30-74.....MAC MAHON, J.
ug.23-74	Filed Stip & Order extending to 9-30-74 time for deft (Schlafly) to answer the complt.....MAC MAHON,J.
ug.29-74	Filed Stip & Order extending to 9-30-74 time for deft (Carton) to move or answer re complt.....MAC MAHON,J.
Sep.9-74	Filed Stip & Order extending to 9-30-74 time for certain defts to move or answer the complt.....MAC MAHON,J.
ep.9-74	Filed Stip & Order extending to 9-30-74 time for deft (Tow) to move or answer the complt.....MAC MAHON,J.
ep.9-74	Filed Stip & Order extending to 9-30-74 time for deft (Teleprompter) to move or answer the complt.....MAC MAHON,J.
ep.13-74	Filed notice of appearance of Milbank Tweed, as attys for Allen E. Puckett & John H. Richardson)
ept 13-74	Filed Stip. & Order that the time which defts. Allen E. Puckett & John H. Richardson may answer the complaint is extended to 10-15-74..MacMahon, J.
ept 17-74	Filed summons with Marshall's return. Served:

Teleprompter Corp	by Jarry Simon	on 8-1-74
Touche, Ross & Co.	by D. Charmack	on 8-5-74
Jack K. Cooke	by Mrs. J.K. Cooke	on 8-19-74
William J. Bresnan	by Mrs. Bresman	on 8-7-74
Berle Adams	by Mrs. B. Adams	on 8-6-74
Marvin Carton	by Mrs. Bryant	on 8-1-74
Ralph F. Lewis	by under door	on 8-1-74
Philip L. Lowe	by Sharon Davis	on 8-6-74
Charles Luckman	by Elsa Barrera	on 8-19-74
Maurice B. Mitchell	personally	On 8-22-74
Allen E. Puckett	By Mrs. Puckett	on 9-3-74
John H. Richardson	by Housekeeper	on 8-6-74
Monte E. Livingston	by Miriam McDonald	On 8-5-74
Jack D. Wrather	by Mrs. R. Granville	on 8-3-74
J.R. Barrington	by woman in house	on 8-6-74
Leonard Tow	by Mrs. L. Tow	on 8-12-74
Herbert J. Schlafly	by Mrs. Schlafly	on 8-2-74

ep 16-74	Filed Stip. & Order that the deposition of pltff is adj. to 10-21-74...the time of the Pltff. to answer the interrogs of deft. Touche, Ross & Co is adj to 9-30-74.. ..the time for the deft. Touche, Ross & Co to answer the complaint is extended to 11-5-74...MacMahon, J.
p.19-74	Filed pltffs answers to deft (Touche, Ross) interrogs.
p.23-74	Filed affdvt of service by Steven L. Kroleski of notice of appearance & demand on defts (Puckett & Richardson.)
p.23-74	Filed Stip & Order that time for deft (Leonard Tow) to move or answer complt is extended to 10-15-74.....MAC MAHON,J.
.1-74	Filed Stip & Order extending to 11-5-74, time for deft (Schlafly) to move or answer the compl.....MAC MAHON,J.
.2-74	Filed Stip & Order extending to 11-5-74, time for deft (Teleprompter) to answer or move re compl.....MAC MAHON,J.
.5-74	Filed Stip & Order extending to 11-5-74 for defts Cook, Wrather, Lewis, Lowe, Shafer & Bresnan to answer the compl.....MAC MAHON,J.

A TRUE COPY
RAYMOND

-4-

18/

A-25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

#43708

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,	73 Civ. 4133
Plaintiffs,	OPINION AND ORDER
-against-	
TELEPROMPTER CORP., et al.,	
Defendants.	

OWEN, District Judge

This motion to impose sanctions raises two serious questions: (1) whether the attorney for the plaintiffs mailed copies of purported clients' answers to interrogatories to an adversary on the last day permitted by a court order without in fact having any originals of such answers in hand from any client or any awareness of their existence, and (2) whether the attorney thereafter made false statements to counsel and the Court and gave false testimony as to the foregoing.

Defendant Touche Ross & Co. ("Touche Ross") has moved for the imposition of sanctions against plaintiffs, the Independent Investor Protective League ("IIPL"), Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael"),

MICROFILM

Michael Fagan("Fagan") and their counsel, I. Walton Bader, pursuant to Rule 37(d) of the Fed. R. Civ. P. Sanctions are sought by virtue of circumstances disclosed in hearings held before me relating to the service on September 5, 1974 of copies of purported answers of plaintiffs to Touche Ross' Interrogatories dated November 1, 1973.

Touche Ross charges that plaintiffs and their counsel conspired to mislead Touche Ross into believing that the original answers to the November 1, 1973 Interrogatories had been received from plaintiffs Randolph, Michael and Fagan on September 5, 1974, prior to service of the copies when in fact they had not been received, and plaintiffs' counsel had no awareness even of their existence.

It is further charged by defendant Touche Ross that when, on September 11, 1974, it was disclosed that the original answer of Michael and Fagan had not been received on September 5, 1975, plaintiff IIPL and Mr. Bader misled Touche Ross and the Court into believing that the original answers of Randolph had been received on September 5, 1975, when they had not been, and further that unconformed copies of the proposed answers of Michael and Fagan had been served "inadvertently" by someone other than Mr. Bader.

As this motion involved serious allegations,

I held hearings on November 9, 13 and 14, 1974. I find the following facts.

The Events Prior To
September 6, 1974:

In February 1974, I held a status conference in this action. At that time, it was disclosed to me that answers to certain interrogatories propounded by Touche Ross dated November 1, 1973, were long overdue. I therefore orally directed Mr. Bader, counsel to plaintiff, to promptly answer those interrogatories.

Apparently nothing happened and six months later, on August 16, 1974, I granted a written motion by Touche Ross to compel each of the plaintiffs to respond to the interrogatories and directed that the order be complied with within 20 days, the 20th day being September 5, 1974, a Thursday.

The Events of Friday,
September 6, 1974:

On September 6, under postmark of September 5, Mr. Eno, a partner in the firm of Rosenman, Colin, Kaye, Petschek, Freund & Emil (the "Rosenman firm"), representing defendant Touche Ross, received in the mail a copy of purported answers of IIPL.[1] In a separate enclosure, also

---

[1] The copy of the answers of IIPL bore the typed date September 5, 1974.

under postmark of September 5, copies of purported answers of individual plaintiffs Randolph, Fagan and Michael were received.[2] All of these copies were unconformed, except that the IIPL answers had written in, in the verification, the words, "s/Merrill Sands." Sands was the controlling officer of IIPL.

Mr. Eno that day mailed a letter to Mr. Bader requesting that the originals of the several answers be immediately filed pursuant to Rule 6(c) of the General Rules of this Court. The letter noted the failure to conform the copies of the several answers and requested information regarding the same, including whether they had actually been signed and sworn to by the several plaintiffs.

The Events of Monday,
September 9, 1974:

On Monday, September 9, at 9:15 A.M., Ms. Rosen, a receptionist in the Rosenman office, received a telephone message from Mr. Bader for Mr. Eno stating:

> "Rec'd your letter about Teleprompter case. Will send you photocopies of original Interrogatory answers within next few days."

---

[2] The copies of the answers of Randolph, Fagan and Michael each bore the typed date, August 29, 1974. These three plaintiffs lived in states other than New York and Mr. Bader apparently had prepared and mailed the proposed answers to each to consider, execute if appropriate, and return.

At 10:37 A.M., Mr. Bader called Mr. Eno again; Mr. Eno was not available to take the call, and Mr. Bader could not be reached when Mr. Eno returned the call.

Thereupon, Mr. Eno hand-delivered a letter to Mr. Bader. That letter stated:

> "Dear Mr. Bader:
>
> We today received a telephone message from you in response to my letters of September 6 and 7 in which you say that you will send us copies of the original Interrogatory answers 'within the next few days.' This is unsatisfactory to us. Mr. Nevling is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 6(c) of the General Rules of the Court, we shall assume that you do not have the originals and did not have them on September 5, 1974, and shall proceed accordingly."

The Events of Tuesday, September 10, 1974:

On Tuesday, September 10, at 9:25 A.M., Mr. Eno's secretary received a telephone call from Mr. Bader, and typed up his message as follows:

> "Mr. Bader called. Re Interrogatories. He will be sending photocopies of original answers. He extends his apologies. He

will extend your time to answer for 2 1/2 or 3 weeks." [3]

About 10:30 A.M., Mr. Eno called Mr. Bader, and was told that he was unavailable. Mr. Eno then told Mr. Bader's secretary to have him call Mr. Eno as a matter of urgency, and that if Mr. Eno did not hear from Mr. Bader, he intended to communicate with the Court. Mr. Bader's secretary said that she would try to reach him. Thereafter, Mr. Bader's secretary called Mr. Eno back and stated that she had been unsuccessful in reaching Mr. Bader and asked Mr. Eno to wait until 1:00 P.M. before calling the Curt, to which Mr. Eno agreed. Mr. Bader called Mr. Eno at about 12:30 P.M. Mr. Eno told him he was not satisfied with the messages that he had been receiving and that he wanted to see the original answers of all the plaintiffs immediately. Mr. Bader said that Mr. Eno had a right to see them but that he was busy on a deposition and could not show them immediately, but would in a few days. Mr. Eno insisted on seeing them that day and told Mr. Bader that he did not believe that Mr. Bader had the originals. Mr. Bader then stated, "I have them. You can take my word

---

[3] Mr. Bader does not dispute this message, except that he recalled saying "copies" rather than "photocopies."

for it." Mr. Eno said that he or Mr. Nevling would meet Mr. Bader in his office later that day after the deposition. Mr. Bader said that was not possible because he did not know where in his office the originals were and he might have left them at home. Mr. Eno said that he would then meet Mr. Bader in his office at 9:00 A.M. the next morning, to which Mr. Bader agreed.[4] Mr. Eno thereupon sent to Mr. Bader by hand the following letter:

---

[4] Mr. Bader, in testimony before me, at first did not recall this conversation at all:

> Q. You don't recall your conversation with me on September 10th when your secretary told you that you had better get in touch with me and you say you called me from the offices of White & Case? Do you remember that?
> A. I say I may have spoken to you, Mr. Eno. I don't recall the conversation.
>
> Q. You don't recall the conversation?
> A. No, sir.
>
> Q. At all? You have no recollection of that conversation?
> A. No, sir.

Later, his recollection was in part refreshed and he testified:

> Q. Did I answer you by saying I didn't want to take your word for it, I wanted to see them? Does that refresh your recollection at all?
> A. I believe you said something like that, yes, sir.
>
> Q. And did you --
> A. And I said I couldn't do it that day because I was tied up in depositions, it was late and I couldn't get back to the office, I didn't know where the originals were, I hadn't been in the office for several days, but if you came in bright and early the next morning I would be very happy to show them to you.

"Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Nevling of our office the originals of the purported further answers of plaintiffs Michael F. Randolph, Jr., Gary Michael and Michael Fagan, as well as the original further answers of IIPL."

The Events of Wednesday, September 11, 1974:

Early on the morning of September 11, Mr. Nevling went to Mr. Bader's office where he was shown the original answers of IIPL by Mr. Bader. They were dated September 5, 1974 and purportedly were sworn to on September 5, by Merrill R. Sands, as Secretary of IIPL, in New York County. Mr. Bader was the notary who took Sands' signature and the answers were also signed by Mr. Bader. Mr. Bader also exhibited the original answer of Randolph dated August 29, 1974 and purportedly sworn to on September 3, 1974 by Randolph in California; and the answers were also signed by Mr. Bader.

When Mr. Nevling asked for the answers of Fagan and Michael, Mr. Bader said that he could explain, and gave Mr. Nevling his affirmation dated September 11, 1974 which Mr. Bader had drawn to support a motion for extension of time to answer. The affirmation merely stated that the

answers of Fagan and Michael had not yet been received.[5]

Later that day, Mr. Eno sent a hand-delivered letter to the Court, with a copy to Mr. Bader. In that letter, Mr. Eno noted, among other things, that in his conversation with Mr. Bader the day before (September 10) Mr. Bader had assured Mr. Eno that he had the originals but that he did not know where the originals were in his office and that he might have left them at home.

Subsequently that day, Mr. Bader also sent a letter to the Court, with a copy to Mr. Eno. Therein he stated among other things:

> On September 5, he had Sands sign the IIPL answers and he, Bader, "instructed My Secretary to send copies . . . to all attorneys. . . .[6] and that he, Mr. Bader, inspected those copies

---

[5] That affirmation said nothing about copies of any answers being "inadvertently" sent to the Rosenman firm.

[6] His secretary, one Dorothy Blacker, later testified that she did not mail out anything at all, and contradicted Mr. Bader's statement about any instructions to send copies.

Q. Your testimony is that after you typed those Exhibits A,C,D and E[the answers to interrogatories] you had no conversation with Mr. Bader about those documents at all, is that correct?

A. Correct.

Q. Did he ever tell you that you should be on the alert to look for a letter coming from the people to whom you mailed the originals, that is, C,D, and E?

A. No.

Similarly, Mr. Sands, who later testified that it was he who mailed the unconformed answers, also testified that Mr. Bader had not instructed him to mail any answers out (see Fn. 10 ,infra).

before they went out and they were "properly conformed."

In the afternoon of September 5, he had to leave his office for St. Louis, but before he left the office, Mr. Bader "prepared" copies of the answers which he intended to conform and mail when he returned from St. Louis.7/ "By inadvertence" on that day (September 5) "apparently" a set of the unconformed answers had been sent to the Rosenman firm. Further, on September 5 he was told during his absence from his office that "Randolph's answers" had arrived.

On September 9, again while he was out of the office, he was told about the receipt of Mr. Eno's letter of September 6 but did not know its contents. Believing that the Rosenman letter of September 6 referred to the answers of Randolph, Fagan and Michael, he called the Rosenman office on September 9 and 10, and the messages he left were to the effect that he "hoped to receive the signed copies of the original documents in a few days."8 That it was not until about 6:00 P.M. on September 11, when he arrived in his office, that he "for the first time" realized what had happened.

---

7 It should be noted that (a) these would in any event therefore have been late under the Court's order and (b) Mr. Bader did not in fact go to St. Louis on September 5. He later testified to having worked in the library of the New York Law Institute for several hours that afternoon so that he "missed his plane" to St. Louis, went home to Scarsdale and went the next morning.

8 Mr. Bader's testimony on this subject is set forth in Fn. 4 supra. This September 11 letter obviously differs from Mr. Bader's telephone message to Mr. Eno's secretary the prior day, September 10 (p.5-6 supra), the essential accuracy of which he did not dispute (see Fn. 3 supra).

Events Subsequent To
September 11, 1974:

Apparently, on September 17, 1974, Sands, Bader's client, executed an affidavit in which he stated that he was the one who had "inadvertently" mailed the unconformed copies of the Randolph, Fagan and Michael answers on a visit to Mr. Bader's office late in the day on September 5;[9] that prior to mailing them he had seen Randolph's answers "which had arrived late in the day at Mr. Bader's office and I then assumed that I could send out the copies thereof."

On September 20, Mr. Bader addressed the Court on this matter on the argument of Touche Ross' motion to dismiss. At that time he made the following statements:

1. That he left his office on September 5 at about 3:00 P.M.

2. That Sands was with him when he left the office, and he told Sands that if the answers of the other plaintiffs

---

9 It should be noted that in October 1974, before the hearing, Mr. Bader wrote the Court a letter expressing concern at possibly not being able to have Mr. Sands' testimony to support the foregoing. This "problem" did not materialize and on the hearing it was revealed that Sands was Bader's brother-in-law.

came in he should mail out the copies.[10]

3. That after he left (at about 3:00 P.M.) Randolph's answers came in in the mail and that Sands had inadvertently mailed out all the answers instead of just Randolph's.

4. That Randolph's answers had come in in the 3:00 o'clock mail on September 5.[11]

5. That he did not recall when he first learned that the unconformed copies had been sent, but he knew that when he spoke with Mr. Eno on September 10.

Mr. Bader testified during the hearings held on November 4, 13, 14, 1974. At that time his final version of the facts was that Sands signed the original answers of IIPL in Mr. Bader's office between 8:30 - 9:30 A.M. on Thursday, September 5; that copies of those answers were put

---

[10] Sands, however, testified (1) that he spent the middle of the day downtown in New York City and came back to the office later after both Bader and his secretary had left; and (2) that Bader had not instructed him to mail out anything. See Fn. p. 13 infra.

[11] Mr. Bader testified later that the last mail normally came in at 3:30 P.M. However, records of the U.S. Post Office revealed that the last mail carrier to Mr. Bader's office on September 5 had finished his deliveries and had returned to the post office by 2:07 P.M. The time of his last delivery to Mr. Bader's building, therefore, was 1:30 to 1:45 P.M.

in envelopes, labels were put on the envelopes, Sands took the envelopes to mail and immediately left the office.[12] Sands then testified that by arrangement, later in the day, after Bader and his secretary had both left, he went back to Bader's office. It was empty. He saw that Randolph's answer had come in in the late mail. He waited, and Bader telephoned from the library of the New York Law Institute, and, as he testified:

> I got a telephone call on 61, [Bader] called in at four, quarter after four, some time a little after four it was. And I said, you don't have to worry, the Teleprompter answers are here. He said fine, good. I said, go, have a good trip now. He said, good. That's it. Hung up.

Based on that conversation, which was devoid of any authority, Sands, the client, who had not been told

---

12 The Interrogatories bear the typewritten date, September 5. Mrs. Blacker, who typed the Interrogatories, testified that she came to work at perhaps 10:20 and never saw Mr. Sands. She testified that she dates papers the day she types them and remembers no instructions otherwise as to these Interrogatories. I credit this testimony. The question therefore arises: if she typed the Interrogatories after her arrival on September 5, what of the Bader and Sands testimony that Sands signed and Bader notarized it and Sands took it away to mail before her arrival that day?

by anyone to mail anything,[13] allegedly took it upon himself, without notifying Bader, to take the envelopes from his lawyer's desk containing the unconformed copies of all the sets of answers of Interrogatories and mail

---

13 Sands testimony was as follows:

Q. And he [Bader]didn't tell you to mail them?
A. No, he didn't tell me to mail them.

Q. What induced you to mail them?
A. Because that's one of the reasons I went to his office in the morning was to sign so that my thing should be mailed out so I figured those had to go out.

Q. You had him on the telephone, he was on the telephone?
A. Right.

Q. Important matter. You didn't say to him, "Should I mail them out?"
A. No, I didn't.

Q. You didn't. And he didn't say to you, "Mail them out?"
A. He didn't tell me to mail them.

Bader's testimony was to like effect:

The Court: Mr. Bader, at 4:15, as far as you knew the three carbon copies were sitting on your desk?
The Witness: Yes,sir.

The Court: And that was the last day to mail?
The Witness: Yes,sir.

The Court: And you did not tell Mr. Sands, now you can conform them and mail them?
The Witness: No,sir.

them out, thus "inadvertently" causing the whole problem.[14] I reject this concocted story as I reject Mr. Bader's explanation that he was so busy that he never got to his office for the next several days to "learn" what had happened.

Rule 37 of Fed. R. Civ.P. provides that if a party fails to serve answers to interrogatories (particularly after a court order providing therefor) the court may dismiss the action and, in addition, require the party failing to act or the attorney for said party, or both, to pay the reasonable expenses, including attorneys' fees caused by the said failure to act, unless the court finds that the failure was "substantially justified or that other circumstances make an award of expenses unjust."

On the entire record before me, it is clear and I cannot but conclude that Mr. Bader intended the Rosenman firm to believe that the various answers to interrogatories

---

[14] Significantly, although Mr. Bader by September 11 was aware of the fact (1) that the Rosenman firm had raised serious questions with the Court as to a deception on his part, and that (2) certain papers had been mailed by someone from his office giving substance to these contentions, it was not until September 15, four days later, that, according to his brother-in-law Sands, he first spoke to him about the incident, and even more time elapsed according to his secretary before he spoke to her about the matter. The inference one feels compelled to draw is that since Mr. Bader knew that he himself had sent out the unconformed copies on September 5 without having secured the originals, the conversations with Sands and his secretary coming so much later were "window dressing" for the court hearing that was foreshadowed.

were due and timely served in accordance with the Court's order on the very last day for such service, September 5, 1974, when in fact they had not been. I also cannot but conclude that thereafter Messrs. Bader and Sands[15] made false statements and gave false testimony pursuant to an evolving plan to first deceive counsel and later the Court as to the circumstances surrounding the mailing of the purported "answers" to interrogatories on behalf of plaintiffs Independent Investor Protective League and Fagan, Michael and Randolph on September 5, 1974. Mr. Bader flatly conceded to Mr. Nevling on September 11 (and later to the Court) that the Fagan and Michael original answers had never been received.[16] Given Mr. Bader's story of leaving his office on September 5 at 3:00 P.M. (although

---

[15] It is reasonably clear that Mr. Bader did not bring Mr. Sands into the picture as the "unknown mailer" until some time after his [Bader's] September 11 letter to the Court since in that letter he indicated that his secretary had mailed the copies in question. (See p.9-10 supra.)

[16] This September 11 admission is squarely in conflict with his undisputed earlier phone messages to Mr. Eno's secretary on September 9 and 10. (See Fn. 3 supra.)

subsequently changed) and the Post Office proof of the last delivery being before 2:00 P.M. on that day, obviously, the Randolph answers were not received by his office in the "late" or any other mail on September 5, the last day for service. They could only have arrived on a subsequent day. As to the answers of IIPL, I credit Mrs. Blacker's testimony from which I conclude that the IIPL answers dated September 5 were typed on that day at some point between 10:20 A.M. and 3:00 or 3:15 P.M. Given this, the testimony of Messrs. Bader and Sands to the effect that the IIPL answers were signed and notarized around 9:30 that morning is necessarily false. There being no credible evidence as to when these answers were thereafter, in fact, executed, I am unable to conclude that they were timely executed and served. I therefore dismiss the entire action as to Touche Ross with prejudice.[17]

Given the conduct of Messrs. Bader and Sands, I determine that plaintiff Independent Investor Protective League and attorney I. Walton Bader shall pay to the

[17] At some point during the pendency of this motion, voluntary discontinuances were filed on behalf of the individual plaintiffs.

defendant Touche Ross & Co. the actual expenses, including attorneys' fees, incurred by Touche Ross commencing with September 6, 1974, occasioned by this conduct. To that end, the attorneys for Touche Ross are to submit within 30 days in affidavit form a statement of such services rendered for the period commencing September 6, 1974, to which plaintiff IIPL and I. Walton Bader may respond, so that I may reach an appropriate conclusion on this issue.

The foregoing is so ordered.

While it is not germane to a determination of the motion of Touche Ross, it is not inappropriate to observe that conduct such as that engaged in by plaintiffs' counsel herein cannot and will not be countenanced by the Court. I am, therefore, referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of attorneys.

United States District Judge

January 9, 1976.

cms

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs.	vs.	73 Civ. 4133 (LFM)
TELEPROMPTER CORP., et al., Defendants.		

Before:

HON. RICHARD OWEN,
District Judge.

New York, November 4, 1974;
4.30 o'clock p. m.
(Room 2804)

APPEARANCES:

I. WALTON BADER, Esq.,
Attorney for Plaintiffs
274 Madison Avenue
New York, N. Y.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL, Esqs.,
Attorneys for Defendant
Touche Ross & Co.
575 Madison Avenue
New York, N. Y.;

BY: LAWRENCE R. ENO, Esq.,
MARVIN PICKHOLZ, Esq.,
Of Counsel.

---

cms

THE COURT: Mr. Eno, we are here on the motion papers calling for a hearing on October 4th, is that the --

MR. ENO: That is correct, your Honor.

THE COURT: (Continuing) Is that the set of papers?

MR. ENO: Yes, sir.

THE COURT: And the parameters of this as you see it are what?

MR. ENO: Well, the question that I understand we have the hearing on, your Honor, were the circumstances under which this purported answers to interrogatories of the plaintiff Randolph received.

THE COURT: Very good.

MR. ENO: And there have been statements made to the Court and affidavits submitted to the effect that they were received in Mr. Bader's office on September 5th, 1974.

THE COURT: Very good.

MR. ENO: And the question is whether they were received on that day. In that connection I would like to examine Mr. Bader, if I may, your Honor.

MR. BADER: Certainly. But do you want me first or do you want Mr. Sands first?

MR. ENO: I would like you first.

MR. BADER: By all means. Of course.

This is a rather new experience for me, Judge. I must tell you this is the first time I have been in the witness box.

- -

I. W A L T O N B A D E R , called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q You are an attorney at law, Mr. Bader?

A Yes, sir.

Q You are a member of the bar of this Court?

A Yes, sir.

Q Are you the general counsel of Independent Investor Protective League?

A Well, I suppose you might call me that.

Q Well, don't your papers indicate that you are the general counsel of the Independent Investor Protective Lague?

A I have signed several papers like that, yes, but I am general counsel only by sufference of the board of directors.

Q Well, are you or are you not the --

THE COURT: Mr. Eno, let me have the clerk move this little rail away so that you can come around here a bit. Just so that the witness is not facing away from you.

THE WITNESS: Mr. Eno, as far as I know I am general counsel to the Independent Investor protective League today, but as of tomorrow I could be fired.

Q But today you are still the general counsel?

A Yes, sir.

Q Is your secretary here today?

A No, sir.

Q Do you know that we requested her presence and served notice on you asking for her to be here?

A Yes, sir, ant it's completely unnecessary because I have examined her very thoroughly about this and she knows nothing about the facts involved. As a matter of fact, I have an affidavit from her to that effect. She is a part-time secretary, she works only Tuesday, Wednesday and Thursday, and under those circumstances I did not think it was necessary to have her.

MR. ENO: I would like teh Court to take notice that we requested her presence and we served notices for her to be here today. I think her testimony is essential.

THE COURT: I will give consideration to that at

the end of the hearing.

Q Is Mr. Sands here today?

A Yes.

Q Who is Mr. Merrill Sands?

A Mr. Sands is the secretary of the Independent Investor Protective League, sir.

Q What is his occupation?

A Perhaps you ought to ask him that.

Q No, I am asking you.

A As far as I know he is a real estate broker in Brookfield Center, in addition to being secretary of the Independent Investor protective League.

Q Where is Brookfield Center?

A In Connecticut.

Q Do you know his address?

A I believe, but again, Mr. Sands is here -- Mr. Sands, could you give me your address?

MR. ENO: Your Honor, will you please direct the witness to answer my question?

THE COURT: Mr. Bader, you field these as best you can. If you don't know --

THE WITNESS: I'm sorry, your Honor, but I am under oath and I want to be absolutely sure I am accurate.

I hope your Honor understands.

THE COURT: If you don't remember the address, the answer is, I don't recall.

THE WITNESS: I think it's Pritton Hill Road, in Brookfield Center.

Q I show you a copy of a set of answers of Independent Investor protective League and ask you whether you can identify these as a copy of the answers (handing).

A They certainly look like it, sir.

Q Can you identify them?

A They certainly are.

MR. ENO: Your Honor, shall we mark these?

THE COURT: Yes.

(Defendants' Exhibit A was marked for identification.)

BY MR. ENO:

Q The original of those answers, were they signed by Mr. Sands?

A Yes, sir.

Q Were you the Notary Public that took his signature?

A Yes, sir.

Q Did you take his signature on September 5th, 1974?

A Yes, sir.

Q Where was Mr. Sands when you took his signature?

A In my office, sir.

Q At what time of the day did You take his signature?

A It was early in the morning, sir. I think it was somewhere between 8.30 and 9.30. I can't pinpoint the time exactly.

Q Did Mr. Sands remain in your office after he signed these?

A No, sir. Mr. Sands told me --

Q Where did --

A (Continuing) Prior to this hearing what the facts and circumstances were, actually --

Q Just please answer the question as best you can as I put it to you from your recollection.

A Present recollection --

Q I can only ask you --

A My recollection at the time that I wrote certain letters.

Are you talking about my present recollection?

Q Please just answer my question.

How long did Mr. Sands remain in your office after he had signed Exhibit A?

A Well, we had to put those in envelopes, I had to stamp envelopes, my secretary wasn't in the office at the time, I had to put labels on that to send to the various other attorneys, and then I believe I gave those to Mr. Sands. Mr. Sands took those documents with him, and I believe mailed them, but I mean I have no knowledge of what he did.

Q What time did he leave your office?

A I'd say about 9.30.

Q You certified in these answers that you mailed them, didn't you?

A Yes, sir.

Q You now say Mr. Sands mailed them?

A I gave them to Mr. Sands. I consider that to be mailing on my part.

Q What time did your secretary come to the office on September 5th?

A About 10.30, sir.

Q Do you have any record as to when she came?

A No, sir, but those are her normal hours.

Q Did you give any instructions to your secretary with regard to these answers which are Exhibit A?

A Well, I had thought originally --

Q No, please answer my question. Did you?

A YOu mean on September 5th?

Q Yes.

A No.

Q Now I show you a letter dated September 11, 1974, and I ask you whether you wrote the original of this letter (handing).

It is addressed to Judge Owen?

A Yes, sir. I certainly did. That's my signature.

MR. ENO: I would ask that that be marked for identification.

(Defendants' Exhibit B was marked for identification.)

xx BY MR. ENO:

Q In this letter you said, referring to the date of September 5th, 1974, and to these answers which had been marked as Exhibit A:

"I further instructed my secretary to send copies of the answers to interrogatories executed by the Indepdndent Investor Protective League to all attorneys for the defendants."

A Yes, sir, I wrote that, but that was not September 5th.

Q I beg your pardon? Then I will read this

paragraph --

A I'm familiar with the paragraph, sir.

Q Perhaps the Judge is not:

"On September 5th, 1974, I had Mr. Merrill Sands, the secretary of the plaintiff Independent Investor Protective League, sign the answers to interrogatories. I further instructed my secretary to send copies of the answers to interrogatories executed by the Independent Investor Protective League to all attorneys for the defendants.

"I inspected those before they went out. They were properly conformed and there is no question that they were served in time. There does not seem to be any complaint with respect to these answers.

"In the afternoon of September 5th, 1974 I had to leave the office for St. Louis, Missouri."

A That's right.

Q Did you not tell the Court in this letter that you had instructed your secretary to mail those answers?

A I don't think that that means that at all. The fact is that when I did write that letter I had really thought that my secretary had mailed those things out. After checking with Mr. Sands I discovered that he was the one who mailed them.

MR. ENO: Would your Honor like to see this?

THE COURT: I have the original here that was sent to the Court.

Q Now I show you three answers, purported answers to interrogatories, one by Mr. Martin F. Randolph, one by Michael Fagan and one by Gary Michael, and I wonder if you can identify those as unconformed copies of their answers (handing).

A Yes, sir. Yes, sir.

MR. ENO: I ask that these be marked, your Honor.

(Defendants' Exhibits C, D and E were marked for identification.)

xx BY MR. ENO:

Q At the time when you say you gave Mr Sands these -- the answers to mail, where were these unconformed copies?

A I believe on my desk in my office.

Q After Mr. Sands left what did you do with respect to these unconformed copies?

A I left them on my desk when I left.

Q What time did you leave the office?

A I'd say about, somewhere between -- I can't tell you exactly. It was somewhere between 12 and 2 o'clock. I can't pinpoint it any closer than that.

Q Where were they when you left your office?

A On my desk in an open envelope, sir.

Q In an open envelope?

A Yes, sir.

Q What kind of an envelope?

A I believe a white business envelope.

Q Did you give your secretary instructions about any of these answers?

A No, sir.

Q You did not?

A No, sir.

Q You knew that September 5th was the last date on which you could serve the answers to interrogatories, didn't you?

A Well, I certainly knew that that was what they called for by the order of the Court, yes, sir.

Q And you gave your secretary no inseructions with respect to these unconformed copies?

A No, sir. I had not received any answers to interrogatories from any of these people when I left, and it would have been impossible for me to have mailed those out. I could not have conformed them. I would have been committing perjury if I had done that.

Q So when you left you gave your secretary no

instructions with regard to that?

A No, sir.

Q Now I show you a letter dated October 9, 1974 from you to Judge Owen and I ask you whether you can identify a copy of that letter as a copy of the original that you sent (handing).

A Yes, sir. Yes, sir.

MR. ENO: May I have that marked, please?

(Defendants' Exhibit F was marked for identification.)

xx BY MR. ENO:

Q In this letter of October 9th to Judge Owen you said the following;

"My secretary typed the original interrogatories to the plaintiffs, Martin Randolph, Jr., et al., and mailed them. She put into the file the copies of the interrogatories and attached a note to the file indicating that all the copies were to be retained until the original answers were received so that the copies could be properly conformed and mailed to all of the attorneys.

"That is the last my secretary saw or heard of this matter."

Is that correct?

A That is correct. When I wrote the letter that is what I thought the situation was. I subsequently went over it very thoroughly with both my secretary and Mr. Sands and I found out that it was Sands who had actually mailed those Independent Investor Protective League interrogatories, sir.

Q And your secretary didn't put into the file the interrogatories --

A She certainly did.

Q She took them from your desk?

A No, sir. I think that you are mininterpreting what I said.

Q Well, tell me what you said?

A I said that when she typed the original copies, which goes far back beyond the time of September 5th, she put the copies in the file. Obviously she couldn't have mailed them until the copies were conformed and signed.

Q I see.

Now, did anything happen in this matter between the time that you gave Mr. Sands the copies to file, the interrogatories to mail out, the copies to mail out, and the time you left your office?

A Well, lots of things happened. First of all --

Q With respect to this matter?

A Oh, yes. Yes, sir.

Q What happened?

A First of all I had not received, by the time Mr. Sands had left, the copies of the answers -- the originals of the answers to interrogatories, with the exception, of course, of Independent Investor Protective League which Mr. Sands had signed in front of me.

I told Mr. Sands when he left to please come back to my office at 4 o'clock and find out if these interrogatories would come back, come in in the second delivery, because if they did I would have two days to file them under the local rules of this court.

I told him nothing, of course, about mailing these things, and these things were not mailed as far as I knew when I left the office. They were sitting on my desk.

Q Your secretary was in the office the entire day, was she not?

A No, sir, she leaves at 3.30.

Q So she was there until 3.30?

A Yes, sir.

Q You didn't speak to her about these things at all?

A No, I did not, because our last mail delivery comes in just around 3.30. My secretary very rarely looks at the mail. She more or less is busy typing and, therefore, I asked Mr. Sands to do it.

Q You say your last day mail delivery is at 3.30?

A Normally it's around 3.30. The Post Office Department says 1.30 to 2.30. Normally the deliveries come in late.

Q What was your purpose in asking Mr. Sands to come back to look for those things?

A Because if those things had not come in on September 5th it would have been necessary for me to make a motion for an extension of time with respect to filing those answers. And I had intended to do that promptly on Monday morning if the answers did not come in by that time.

Q You intended to be back by Monday morning, didn't you?

A Yes.

Q So what did you need Mr. Sands for?

A I wanted to know if they had come in.

Q What difference would it make, you would find out Monday morning, wouldn't you?

A That would be three days later.

Q What would you have done if you found out on September 5th they hadn't come in?

A At least I'd know it.

Q You knew it, but you knew that two of them never came in, didn't you?

A Two of them never came in, no, sir.

Q Did you make the motion?

A I made the motion with respect to two of them, yes, sir.

Q When?

A On September -- I believe on September 11th.

Q That wasn't the Monday, was it?

A No, sir, but my schedule got messed up. If you would let me tell you I could explain to you exactly what had happened during the period.

Q Just let me ask the questions, please.

A Go right ahead.

Q In your letter of September 11 to the Court you said you had prepared the copies of the interrogatories which you intended to mail and to conform as soon as you came back from St. Louis: is that correct?

A Yes, sir, that is absolutely correct.

Q Where did you go when you left your office on September 5th?

A The library of the New York Law Institute, sir.

Q How long did you stay down there?

A I'd say I stayed there from about, whenever I arrived, and that could have been any time from about 12.30 to 2.30, until about 7 o'clock.

Q What time did you leave for St. Louis?

A I attempted to leave for St. Louis at 7 o'clock, sir, and I missed the plane.

Q So you say you left your office at no later than what time, 12.30?

A No later than two.

Q No later than two. And you left for St. Louis at seven?

A Yes, sir.

Q Did you call your secretary to ask her whether these answers had come in?

A I called Mr. Sands, sir.

Q Did you call your secretary?

A No, sir.

Q Did you call Mr. Sands?

A Yes, sir.

Q At what time did you call Mr. Sands?

A About a quarter after four.

Q What did Mr. Sands tell you?

A He said the Teleprompter answers had come in, there was nothing to worry about.

Q The Teleprompter answers had come in?

A Yes, sir.

Q Did you ask him which answers had come in?

A No, sir.

Q He just told you the answers came in?

A I got the message, I was very rushed at the time, I just hung up the phone and I was very pleased that that had happened, and that was it.

Q You were expecting three answers; is that correct?

A Yes, sir.

Q One from California?

A Yes, sir.

Q One from Connecticut?

A Two from Connecticut, sir.

Q Two from Connecticut.

A Yes, sir.

Q Two from Connecticut?

A Yes, sir.

Q And you didn't ask him when he said the Teleprompter answers came in which answers had come in?

A No, sir, I did not.

Q Did you give him any instructions?

A No, sir.

Q You didn't tell him to mail the unconformed copies?

A No, sir.

Q You didn't tell him anything, that's all, he told you that they had come in and that was it?

A Yes, sir.

Q Did he tell you when he had gotten back to his office?

A When who had gotten back to his office?

Q When Mr. Sands had returned to your office?

A Wait a minute, I am confused.

Q Did Mr. Sands tell you at what time he had come back to your office that day, September 5th?

A Well, he obviously came back at 4.15 because I called him there and he answered the phone.

Q How long before 4.15 had he come back?

A I don't know, sir.

Q You didn't ask him?

A I didn't ask him, no, sir.

Q And he didn't tell you?

A No, sir.

THE COURT: Mr. Bader, at 4.15 as far as you

knew the three carbon copies were sitting on your desk?

THE WITNESS: Yes, sir.

THE COURT: And that was the last day to mail?

THE WITNESS: Yes, sir.

THE COURT: And you did not tell Mr. Sands, now you can conform them and mail them?

THE WITNESS: No, sir.

THE COURT: Was there any reason for that?

THE WITNESS: Well, first of all I didn't think that Mr. Sands would be qualified to conform mail copies. He is not a lawyer.

THE COURT: How far is the library from your office?

THE WITNESS: It's about twenty minutes by subway, sir.

THE COURT: All right, go ahead.

BY MR. ENO:

Q You say the last delivery of mail is at 3.30 and your secretary leaves at 3.30?

A Yes, sir.

Q And you didn't call your secretary to find out whether the answers came in?

A No, sir.

Q And you didn't tell your secretary to look for

the answers at all?

A No, sir.

Q I show you a copy of an affidavit, Mr. Sands, dated September 17, 1974, and I ask you whether you were the Notary on that affidavit (handing).

A Yes, sir.

On September 17, 1974, sir.

Q You drew that affidavit?

A Yes, sir.

Q Where was it drawn?

A The affidavit was drawn in my office in New York, sir. Mr. Sands lived in Brookfield Center. Actually I think the venue of this affidavit is wrong. It should be Westchester.

Q Would you just answer my question?

Where was the affidavit drawn?

A In my office, sir.

Q On your typewriter?

A I believe -- oh, wait a moment. You are right. This was drawn on a typewriter that I have at 40 Morrow Avenue, Scarsdale, New York, which is an apartment which I occupy. Yes, sir. That was not drawn during office hours. You are right.

Q Who typed the affidavit?

A I did, sir.

Q Yourself personally?

A Yes, sir. I recognize the type now. That's a Selectric typewriter, sir.

Q Where was it executed by Mr. Sands?

A At the A & P Supermarket, right off Route 687, I believe it is, in in Golden's Bridge.

MR. ENO: Would you mark that, please.

(Defendants' Exhibit G was marked for identification.)

xx BY MR. ENO:

Q In your letter of September 11 which has been marked as Defendants' Exhibit B you stated:

"By inadvertence on September 5th, 1974, apparently a set of unconformed answers to interrogatories were sent to the attorneys for Touche Ross but were not sent to the other attorneys. Meanwhile I was told on September 5th, 1974, during my absence from the office, that the answers to the interrogatories by Randolph had arrived."

A Yes, sir.

Q Were you told that the answers of Mr. Randolph had arrived?

A You have to understand when that letter was

written, sir, --

Q No, no. Please answer me.

A I was told that the Teleprompter interrogatories had arrived on September 5th. On September 11th, sir, when that letter was written I had already seen your letter and I had already known the facts by September 10th, and at that point I knew immediately that the interrogatories of Fagan and Michael had not arrived, so that Mr. Sands' message to me, which at the time that I know that letter involved only Randolph, I had thought earlier involved all the interrogatories.

Q Did you sign in at the New York Law Institute?

A I may have or I may not. Sometimes I sign, sometimes I don't, sir.

Q What were you doing down there?

A I was working on a problem for Bert Shostak in St. Louis, sir, involving a case that he and I are working on, the Pennzoil matter, involving the question whether a no-action clause in a debenture is enforceable against an action brought against the debentureholders under the laws of the State of New York. And whether the Securities Act and the Trust Indenture Act also changes the laws of the State of New York, and I frankly got terrifically engrossed in the problem and I still don't know the answer.

Q How long did you stay in St. Louis?

A I stayed in St. Louis until Saturday evening, sir.

Q When did you next come back to your office?

A I didn't come back to my office -- well, let me see.

Would you mind if I give you my itinerary?

Q I would just like an answer when you came back to your office?

A Well, I think I didn't come back until the evening of September 10th, but I would like to go over the itinerary to make sure that's correct.

THE COURT: Why don't you check it out in your mind then give us the bottom line.

THE WITNESS: All right.

A Let me see. Let me see, your Honor. September 9th I was in the Ambassador Club, then in Washington, Washington on the 9th, get back on the 10th, depositions, yes, I came back to my office about, I think 6 or 6 p.m. on September 10th, somewhere around that neighborhood.

THE COURT: Did you get a later plane for --

THE WITNESS: No, sir. I missed the 8.05 to St. Louis which is a plane I normally take which requires

a change of planes in Indianapolis, and I missed that plane and there aren't any more after that, except something that gets you in in the wee small hours of the morning. So I went back to Scarsdale and I took the 7 o'clock plane out the next day.

Q You called my office on the early morning of September 9th, did you not?

A Yes, sir, from the Ambassadors Club at La Guardia Airport, TWA.

Q What time did You call?

A Somewhere around ninish, sir. I don't know exactly.

Q Was your secretary in the office then?

A No, sir.

Q Had You been in your office on Sunday?

A No, sir.

Q Or Saturday?

A No, sir.

Q The preceding Saturday or Sunday?

A No, sir.

Q So you hadn't been in your office at all?

A No, sir. But I knew about the letter you wrote?

Q You did?

A Yes.

Q How did you know?

A Mr. Sands told me.

Q How did Mr. Sands know about my letter?

A Because I saw him on Sunday in Connecticut, Mr. Eno, and I asked him if he could please stop in the office and look at the mail because of the fact that I was going to be out of town an extra day, that I had not expected, this matter in Washington involving United Gas Line Pipeline was something that I had no idea was going to happen.

I asked Mr. Sands to stop in and read me the return addresses, he told me that you had written me a letter and I had assumed at that time that that was probably because I hadn't served you copies of, at that time I thought they were the Randolph-Tagan and Michael interrogatory answers, and, therefore, I called you and I told you to please give me a couple of days, I'm jammed up and I will get them over to you.

Q When after you spoke to Mr. Sands on the telephone from the Law Institute, when did you next have a conversation with him?

A That Sunday, sir, in Brookfield Center.

Q You were in Brookfield Center on Sunday?

A Yes, sir.

Q And you asked him to do what?

A I asked him to -- if he could please come down to my office and check my mail, because I hadn't been there on Thursday afternoon, I hadn't been there on Friday, I hadn't been there on Saturday and we do get a Saturday mail delivery, and I wasn't going to be there on Monday.

On Tuesday I was involved in depositions, and I wanted to at least see if somebody had served me some motion papers or something of that kind. I gave him a key to my office and asked him to check the mail for me.

Q What time did you speak to him? Did you speak to him on Sunday?

A I spoke to him at his home, yes, sir, on Sunday.

Q He had been to your office on Sunday?

A No, he was up to my office on Monday, sir.

Q What time did he get to your office on Monday?

A I guess somewhere early in the morning, because I know that I called Him around 9 o'clock and he was there.

Q You don't know what time he got there?

A No, sir.

Q What plane did you take to Washington?

A I took the 11 o'clock Southern Airways, sir.

Q Southern Airways at 11 o'clock?

A Yes, sir.

Q Where were you at 9 o'clock?

A TWA Ambassadors Club, LaGuardia Airport.

Q Waiting for your plane?

A No, sir. I wanted to make some telephone calls at that particular point to people that I hadn't spoken to the week before and TWA Ambassadors Club is a very nice place to do it. I couldn't have done it in my office, I couldn't have made the plane. And I couldn't have made my appointment in Washington in the afternoon, so I went to the Ambassadors Club and I made my phone calls from there.

Q What time was your appointment in Washington?

A Approximately I believe 1.30, sir.

Q And you took an 11 o'clock plane to be there at 1.30?

A Yes, sir.

Q And you didn't get to your office at all on Mc ?

A No, sir.

Q What time did you get back from Washington?

A I didn't.

Q You stayed overnight?

A Yes, sir.

Q Where did you stay?

A Holiday Inn -- well, I think they call it the efferson Davis Highway, right off Crystal City where the

Patent Office is.

Q Who were you meeting in Washington on Monday?

A About twenty attorneys.

Q Where?

A I believe it was the offices of United Gas Pipeline, but I don't want to take an oath on that, sir. I know that it was a meeting that was held in connection with the settlement of a lawsuit, and I can tell you the lawsuit, but I don't want to either specify the address, or the person's office. I just don't recall.

Q Who did you meet with on the next day in Washington

A I didn't. I came back on the 7 o'clock air shuttle.

Q Seven in the morning?

A Yes, sir.

Q Where did you go when you came back?

A I went immediately to the offices of White & Case where I was involved In depositions.

Q Did you call my office on the morning of -- on that Tuesday morning?

A Yes, sir, I did.

Q The 10th?

A Yes, sir, I did. I gave the same message that I gave you on Monday.

Q How did you know to call my office on Tuesday?

A You weren't in on Monday and I thought I could get to talk to you on Tuesday.

Q Did anybody tell you I had sent a letter on September 9th?

A No, sir.

Q You didn't speak to your secretary?

A I spoke to my secretary later on in the day, but I don't believe she menioned the September 9th letter at that point.

Q And you didn't speak to your secretary at all between the time you had left on Thursday and the time you came back to Your office on Tuesday; is that correct?

A No, that's not so. I did speak to her. I spoke to her once.

Q When?

A She had told me that -- I don't know the time of day, but I know that I had called you, and you were out, and then you had called her and said that unless I made those interrogatory answer originals available to you on Wednesday morning -- that was Tuesday, that would be the next morning -- at 9 o'clock, that you would ask Judge Owen to make an investigation of the cifcumstances involved, and that you felt it was unprofessional practice on my part.

That's the messsage you leftwith my secretary. My secretary --

Q When did you --

A Please let me finish.

Q Sorry.

A (Continuing) My secretary called me and told me about that and said, you had better do something about this. This man is mad. She called me at White & Case and interrupted a deposition because she knew I was there. Then I may have spoken to you, Mr. Eno, later on in the day, or I may not. I just don't recall at this point.

Q When you called my office on the morning of September 9th had Mr. Sands told you what was in my letter?

A No, sir.

Q He never told you what was in the letter?

A No, sir.

Q Had he opened the letter and read it?

A You're asking me about my present knowledge, or my knowledge at that time?

Q I am asking you for your best recollection?

A My best knowledge is he didn't open the letter because I discussed this matter with Mr. Sands prior to this testimony.

Q And you didn't ask him to open it and see what was in the letter?

A No, sir.

Q What was the message that you left in my office on Monday morning?

A That I would send you copies of the original interrogatories. I thought you were talking about Randolph, Fagan and Michael in a couple of days, and that I was out of the office and hadn't come back and, therefore, I hadn't seen them yet. And would you please be indulgent to me, and I would extend your time to do anything that you wanted under the circumstances.

Q How did you know on the basis of what you just said that my letter had asked to see the original of those answers?

A I didn't.

Q You just assumed it?

A No, I knew I hadn't sent them to you. I knew the only --

Q Well, how did you know what was in my letter?

A I didn't.

Q At the time that you left the message in my office, as far as you knew the only thing that had happened was the teleprompter answers had arrived; is that right?

A And I hadn't receired --

Q Now wait a minute, please. The Telepromoter answers had arrived and nothing had been sent to me. You didn't --

A Oh, yes, I certainly knew something had been sent to you. The answers of Independent Investor Protective League had been sent to you.

Q But you didn't know that the othes had been sent to me?

A No, sir.

Q Is that right?

A That's correct.

Q Then how did you kno to leave the message in my office that you were going to --

A Because I knew that what you were talking about when you had written a letter to me, I had assumed you were complaining about something and I had assumed that your complaint was that I hadn't served you original answers of the other three people involved.

Q I show you a message slip and I ask you whether this is the message that you left in my office on September 9th handing).

A Yes, sir. A fairly -- I don't know whether it's accurate as to what I said, but substantively, yes, I

said I would send you copies. I don't think I said photocopies, I think I said copies.

MR. ENO: Would you mark that, please.

(Defendants' Exhibit H was marked for identification.)

THE WITNESS: And I think I may have said, I may have also said, Mr. Eno, of the three individual plaintiffs. That may have been in there too.

Q I show you a copy of a letter dated September 9, Mr. Bader, and I ask you whether that is a copy of a letter that you received from me (handing).

A Yes, sir.

MR. ENO: I ask that that be marked, your Honor.

(Defendants' Exhibit I was marked for identification.)

BY MR. ENO:

Q Now I show you another message slip and I ask you whether this is the message that you left in my office on September 10 (handing).

A I believe I said copies rather than photocopies, and I think it was the original answers of the three individual plaintiffs, and other than that I think the message is accurate.

MR. ENO: I ask that that be marked.

(Defendants' Exhibit J was marked for identification.)

BY MR. ENO:

Q I show you copies of two letters, one dated September 6, 1974, Mr. Bader, and one dated September 7, 1974, and I ask you whether you received the copies of those (handing).

A I certainly did.

MR. ENO: May I have these marked as one exhibit, please?

(Defendants' Exhibit K was marked for identification.)

THE COURT: Just so I understand the sequence of one thing here, when you went to St. Louis on the night of the 5th --

THE WITNESS: I didn't go to St. Louis on the night of the 5th, sir.

THE COURT: Well, when you left the airport and went to Scarsdale and left the next day, you didn't know that any carbon copies of anything had been mailed out?

THE WITNESS: That's correct, sir.

THE COURT: You did not learn that until when?

THE WITNESS: I learned it -- well, I actually knew that that had happened on the evening of September 10.

sir, when I came back to my office and I saw Mr. Eno's correspondence and I found an envelope missing, and obviously at that point it would have had to have been mailed out because he wrote detailed objections to eight interrogatory answers. And I knew at that time that while Randolph's had come in, Fagan's and Michael's had not. And since Mr. Eno had given me details as to why the Fagan and Michael answers were insufficient, it was obvious that he must have gotten copies somehow.

THE COURT: To what did you have reference on the 9th when you say, he will be sending copies of the original answers?

THE WITNESS: Well, as far as I knew at that time, your Honor, I knew that the answers had come in, I didn't know what had come in. Mr. Sands told me the answers had come in on the 5th. I didn't mail anything, so of course I didn't know that anything had been received or sent to Mr. Eno.

Now, when a letter came in from Mr. Eno I assumed that what he must have been asking about is copies of the interrogatory answers of Fagan, Michael and Randolph, which, of course, I hadn't sent to him. So I called him immediately and I told him, please be patient with me, I have been out of the office and I will send those just as

soon as I get back.

At that time I thought they'd been received and lying on my desk, and I thought the copies were lying on my desk. Of course later on I found out to the contrary.

THE COURT: If we assume that you are speaking of the copies that you were aware on the 9th that you were at that point four days late in service --

THE WITNESS: Yes, sir. Absolutely.

THE COURT: Now, your message, telephone message of the 9th which is marked Exhibit H for identification says that you will send -- and I am leaving out the word "photos" which you don't recall, "I will send copies of the original interrogatory answers within the next two days."

THE WITNESS: Yes, sir.

THE COURT: Was that the intended service on your part of the answers in response to the Court's direction to you in August?

THE WITNESS: Yes, sir. No question about that. The service that was served --

THE COURT: Just let me ask you:

Since you were aware you were late, wasn't it appropriate for you to have served those copies immediately, assuming that's what was referred to in the telephone

message, Exhibit H?

THE WITNESS: Now, I'm sorry, your Honor, I am confused. Please bear with me.

THE COURT: Well, I am trying to ascertain what this instrument refers to. I'm saying if this refers to your service of the copies --

THE WITNESS: Of Randolph, Fagan -- there are two different copies involved, your Honor. There's one --

THE COURT: Hold on. If this was to be service of the answers, then on the 9th the service of the answers was late.

THE WITNESS: Yes, sir, absolutely.

THE COURT: And you were aware it was late.

THE WITNESS: Absolutely.

THE COURT: And notwithstanding your awareness it was late, you were apparently in no hurry to serve it because your message says that you will serve them within the next two days.

THE WITNESS: Yes, sir. That is absolutely correct.

THE COURT: Did that cause you any concern as to a motion to dismiss for lack of timely service or anything of that --

THE WITNESS: Well, I must admit, your Honor,

looking at the whole situation in retrospect there is no question that I was negligent at that point. What I should have done, obviously, when I didn't get the answers on the 5th when I left the office, before I left the office I should have made a motion for an extension of time. That's what I should have done. But, I didn't do it.

THE COURT: I'm just trying to find out what this message refers to.

THE WITNESS: I didn't do it.

THE COURT: I take it you say this message does not mean that you had the originals in your possession on the 9th, and you were merely going to give him photocopies of those originals so that Mr. Eno would be assured that there were in fact originals in existence.

THE WITNESS: No, no, sir.

THE COURT: That's not what that message means.

THE WITNESS: That's not what that means, sir.

THE COURT: I see.

THE WITNESS: I didn't know -- I knew, of course, that he had the originals of the Independent Investor Protective League interrogatories. Those, of course, had already been duly served. I knew those went out. But I thought that -- I hadn't seen his letter, and I thought that what he meant was that when the letter had

been written that he hadn't gotten copies of the other three.

THE COURT: Well, what I find a little puzzling is that having had Mr. Sands come back to look and see if certain materials came in the mail at 3.30 on the 5th, and that being the last day for service in compliance with the Court's order which had been very firm, as I recall it, in establishing this time limitation, on the 9th you apparently had no concern whatever about the time. Rather blithely saying that the answers would be served, the interrogatory answers would be served, quote, within the next few days.

THE WITNESS: Yes, sir. I must admit, your Honor, that I do take an approach, perhaps it's wrong, I know that normally when I get involved in situations like this I have normally had very little trouble in stipulating with the attorneys for the other side with respect to this, and there is no question whatsoever, your Honor, that the copies of these interrogatories were actually -- Randolph's copies were actually served on the 10th, that is full and complete copies, as set forth in the affidavit of service that is annexed to the answers. And if the original service is no good and is a nullity, then, of course, the Randolph service of the copies would be late anyway.

THE COURT: Now, the words in Exhibit H, the telephone message of the 9th, "Received your letter about Teleprompter case," you say that you were aware that there was a letter in an envelope that was as yet unopened --

THE WITNESS: Yes, sir.

THE COURT: (Continuing) From Mr. Eno, but you were not aware of anything further?

THE WITNESS: Yes, sir.

THE COURT: I see.

All right, go ahead.

BY MR. ENO:

Q Mr. Bader, you had asked Mr. Sands to go to your office to see what mail had come in?

A Yes, sir.

Q Didn't you ask him to open your mail?

A No, sir.

Q And when he told you there was a letter from me you didn't ask him to open it?

A No, sir. Perhaps I should have, but, I didn't.

Q Why didn't you?

A I just didn't. I was rushed to death. I was making myriads of Phone calls. I just wanted to know if there was anything urgent. I didn't think that a letter from you would have been something that was urgent, and I

just didn't ask him to open it. That's all I can tell you.

Q You spoke to me on September 10; is that correct?

A I spoke to your office.

Did I speak to you also, Mr. Eno?

Q Yes.

A I just don't recall.

Q You don't recall your conversation with me on September 10th when your secretary told you that you had better get in touch with me, and you say you called me from the offices of White & Case? Do you remember that?

A I say I may have spoken to you, Mr. Eno. I don't recall the conversation.

Q You don't recall the conversation?

A No, sir.

Q At all? You have no recollection of that conversation?

A No, sir.

Q Absolutely none?

A I'm sorry, if I had known that I would tell you. I don't know whether I spoke to you --

Q Did you read my affidavits in which I set forth

what the conversation was?

A I read your affidavits, sir, yes.

Q Did that refresh your recollection as to the conversation?

A If you will show me the affidavit it may refresh my recollection at this point.

Q Well, let's see if I can.

MR. ENO: Will your Honor bear with me for just a moment?

THE COUFT: Yes.

Q Mr. Bader, I show you an affidavit of mine dated September 16, 1974, and I direct your attention to pages 4 to 5 (handing).

Down here (indicating).

Would you read from there on?

A I wanted all the original answers. Yes, sir, I read that.

THE COURT: Paragraphs what?

THE WITNESS: That refreshed my recollection, your Honor. Now that Mr. Eno brings it to my attention.

Could you leave this in front of me for just a minute?

Q Surely.

A Thank you, sir.

Q Now, will you tell me what our conversation was?

A Yes. You said that you wanted to inspect the original interrogatory answers. I thought at that point that I had all --

Q Woulo you just tell me what was said? What I said to you and what you said to me.

THE COURT: Mr. Bader, what are you looking at?

THE WITNESS: Mr. Eno is basically correct, your Honor.

Your Honor, paragraph -- the last paragraph of page 4 of the affidavit, what Mr. Eno says in his affidavit, sir, is basically correct. I don't know about the time frame, Mr. Eno, but I will take your word for it.

Q I don't want you to take my word for anything. I would like you to testify as to your best recollection?

A Oh, but I don't recall your conversation, Mr. Eno, and now you are trying to refresh my recollection.

Q That's right. And would you read what is in the affidavit?

A I know now from what you say in your affidavit that I did speak to you. And I do recall that you said something about inspecting the original answers. And I told you that I could not agree because I was involved at that time in a deposition at the offices of White & Case.

And you said that you could inspect them later in the day after the depositions were concluded.

I do not recall saying to you that I did not know whether the originals were in my office and I might have left them at home, I don't recall saying that, Mr. Eno.

Q You don't deny you said it?

A I just don't recall.

Q But you don't deny you said it?

A It doesn't seem to me -- it doesn't seem to me that I could have said something like that to you. It just doesn't seem right somehow.

Q Did you say to me in that conversation, when I said I wanted to see all the originals, did you say to me, "I have them and you can take my word for it"?

A I think I said I was told I have them, or something of that kind, you can take my word for it.

Q Did you say "I was told"?

A "I was told"? I may have said that.

Q No, no. Did you say to me, "I have them and you can take my word for it"?

A I don't recall. I don't think I said that.

Q You don't think so?

A No, sir.

Q Did I answer you by saying I didn't want to take your word for it, I wanted to see them? Does that refresh your recollection at all?

A I believe you said something like that, yes, sir.

Q And did you --

A And I said I couldn't do it that day because I was tied up in depositions, it was late and I couldn't get back to the office, I didn't know where the originals were, I hadn't been in the office for several days, but if you came in bright and early the next morning I would be very happy to show them to you.

Q Is that what you said?

A Something of that sort, yes, sir.

Q Did you tell me that when I said I would be up to your office after your deposition that afternoon, did you say to me, "I don't know whether they are in the office, and I may have left them at home"? Did you say that?

A I think I said, "I don't know where they are in the office," I hadn't been in the office for days, but I don't think I said that I had left them at home. No, sir.

Q You don't think so?

A No, sir.

Q And then I said that we would be up there the first thing the following morning to see them; is that

correct?

A That's right, and I said, "Fine, I will meet you there."

And I did meet you the following morning if you recall. I met you with your associate, Mr. Nevling.

Q When did you first learn that these unconformed copies had been mailed?

A Let's see. I had a conversation with Mr. Sands — no, no. I learned it on the 10th, obviously in the evening when I came back to the office.

Q That's the first time you knew it?

A First time I knew about it. I didn't know at that point who had mailed them. That I learned later.

Q When did you find out who had mailed them?

A When I spoke to Mr. Sands, I believe the following Sunday.

Q You came back to your office on the 10th; is that correct?

A No, sir.

Q In the evening of the 10th?

A No, sir.

Q Didn't you go back to your office the evening of the 10th?

A No, sir.

Q When did you go back to your office?

A No, no, wait a minute. Wait a minute. You are beginning to confuse me greatly, and i don't want to be confused --

Q You have confused me for an hour, so go ahead.

A I went back to my office on the 10th after the depositions were concluded. I knew you were coming in the following morning in order to inspect the original answers, so I went ahead and looked at the file and I discovered several things. First I discovered your letter --

Q Which letter?

A I discovered your letter of the 9th, I discovered your letter of the 6th and I discovered your letter of the 7th.

Q Had they been opened?

A I opened them.

Q None of them had been opened?

A No, sir.

Q Go ahead.

A Now obviously when I read those letter I knew very well that you had gotten copies of those answers somehow and you had gotten unconformed copies. And I also found in the file copies addressed to the other

attorneys in this case which had not been mailed. So I knew obviously that someone had mailed that letter.

Now, at this point I didn't know who, I knew I didn't. It could have been my secretary, it could have been Mr. Sands, it could have been the secretary of my associate, Mr. Scher, it could have been Mr. Scher himself, it could have been a number of people who did this. At this point I didn't know. All I know is, they went out and they shouldn't have gone out, and that's all I knew on the 10th.

My secretary was gone. I didn't have a chance to talk to her or do any investigations at that time.

Q When did your secretary come into the office?

A On the 11th, at 10.30, but I didn't see her.

Q You didn't see her then either?

A No, sir.

Q When did you next see your secretary?

A On the 12th at 10.30.

Q Did you have a conversation with her about this?

A I sure did.

Q You did.

A I had a conversation with her.

Q What was your conversation?

A I sure did have a conversation with her.

THE COURT: On the evening, you knew on the evening of the 10th the copies had gone out?

THE WITNESS: No, I'm sorry, sir -- I returned to my office on the 10th, sir.

THE COURT: And you got Mr. Eno's letters?

THE WITNESS: Yes, sir.

THE COURT: And at that point you knew that the carbons had gone out as to which you had no originals?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: And I didn't know who did this at this point.

THE COURT: Now, when did you talk to your secretary?

THE WITNESS: On the 12th, sir. I was busy on the 11th. I had to be before Magistrate Goettel at 11 o'clock, then from there my deposition was taken at Cravath, Swaine & Moore in the afternoon.

THE COURT: But you were aware, were you not, on the evening of the 10th that some contention was being raised that you had sent Mr. Eno copies of interrogatories as to which there in fact were no originals?

THE WITNESS: Yes, sir, I certainly did.

THE COURT: Did that cause you great concern?

THE WITNESS: Very great concern.

THE COURT: Do you have your secretary's phone number?

THE WITNESS: No, sir. No, sir. She has been very, very retiscent that way. This is a rather peculiar woman. She doesn't like to be called after hours. She likes to work during her hours that she's got, and after that you can't get hold of her.

THE COURT: There is no way to reach her?

THE WITNESS: No, sir.

THE COURT: Do you have an address for her?

THE WITNESS: No, sir.

THE COURT: Could you send her a telegram?

THE WITNESS: No, sir. But I spoke to her on the 12th, I assure you I did.

THE COURT: All right, go ahead.

Nowhere in your office I take it is there a telephone number or an address for her?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. ENO:

Q When you had left these unconformed copies when you left the office on September 5th, you say there was an envelope attached somewhere?

A They were in an envelope, sir.

Q They were in an envelope?

A Yes, sir.

Q Were copies of those in envelopes addressed to the other attorneys?

A I believe they were, yes, sir.

Q Did Mr. Sands ever explain to you how come he just mailed the one to your office and didn't mail the others to the other attorneys?

A I wonder if we couldn't leave that for Mr. Sands.

Q No, I'm asking you, did he ever tell you?

A Yes, he did.

Q What did he say?

A He said, that was the firm you were worried about and, therefore, I thought those were the ones I ought to get out. But this is subsequent, I mean, I'm not now talking about the 11th. This is after the conversations with many other people as to the circumstances involved. I'm not talking about what I knew on the 11th.

When I wrote the letter to your Honor on the 11th I didn't know a lot of these facts.

THE COURT: Mr. Bader, do you withhold taxes from your secretary?

THE WITNESS: Yes, sir.

THE COURT: Do you have an address for her on the withholding statements?

THE WITNESS: No, sir. They don't require that. They just require a Social Security number.

THE COURT: Did she work on the 11th?

THE WITNESS: Yes, sir, but I didn't see her.

THE COURT: Did you leave word, did you call into the office?

THE WITNESS: I sure did call into the office on the 11th, and I said, I have got to see you tom orrow. You got me in one hell of a lot of hot water.

THE COURT: All right.

BY MR. ENO:

Q What is your secretary's name?

A Dorothy Blacker.

Q I show you this letter dated September 11 and I point out to you that the secretary's initials are "CF."

Who is CF?

A Me.

Q You mean you typed that letter yourself; is that correct

A Yes, sir. That's my code. When I type a letter myself, unfortunately I don't have the secretarial service that I should have, and I have to do a lot of my

own typing, and when I do I put "CF" on that.

Q So your secretary was in the office when you or yourself typed that letter?

A Not at the time I typed the letter, she wasn't in the office. I typed that letter on the evening of September 11, sir.

Q Are you sure?

A Yes, sir.

Q What type in the evening?

A Probably it was quite late. It was probably after I came back from Cravath, Swaine & Moore.

Q Doesn't Mrs. Blacker work for somebody else in that office?

A No, sir.

Q Just for you?

A Yes, sir.

THE COURT: What about "FG"? Who is FG?

THE WITNESS: "FG" is another code I use, your Honor. Those initials, I use various initials depending on what I'm typing. I don't like to use the same initials all the time, but I can tell your Honor that that is something I personally typed.

THE COURT: I see.

Q Could you explain in view of your testimony these

statements in an affidavit of my associate, James K. Nevling, Jr., Esq. of September 16, 1974 when he served in your office an order to show cause in this matter signed by Judge Owen:

"When I arrived at those offices at about 2.50 p.m. the only person present in the outer room of said offices was Miss Dorothy Blacker who informed me that she would not accept or acknowledge service of the order to show cause.

"She denied that she had any connection with the firm of Bader & Bader, or with I. Walton Bader, Esq., the only member of the firm who has been involved in this action to my knowledge, and denied that she was authorized to accept service of process in their behalf."

Can you explain those statements?

A Yes. I can explain it quite easily. You went to the wrong woman and you thought Dorothy Blacker was a woman who was not Dorothy Blacker.

Q This person identified herself to Mr. Nevling as Dorothy Blacker.

A Impossible, because she doesn't work in the front office, she works in the back office. It would be impossible, Mr. Eno. There is a girl who works in the

front office, but she isn't my secretary.

Q When you got to your office did you see the answers of Mr. Randolph?

A You mean on the 10th?

Q Yes.

A Sure.

Q What condition were they in?

A They had been opened and laid on my desk.

Q Where was the envelope?

A It wasn't there.

Q Do you know what happened to the envelope?

A I do not. Well, I know now Mr. Sands told me.

Q What happened?

A He threw it out. I didn't know then.

Q So you never saw the envelope in which they came?

A No, sir.

MR. ENO: May I have just a moment, your Honor?

THE COURT: You may.

THE WITNESS: Parenthetically, your Honor, if I may make a statement at this point, Mrs. Blacker has instructions to open all papers that are served and to admit service of any paper which is served upon me during her normal working hours, and those are specific instruc-

tions, and I believe the firm of Cravath, Swaine & Moore, White & Case, I'm just giving you some names, Shea, Gould, Climenko & Kramer, there are a number of firms of that sort with whom I have had business who have served papers on Mrs. Blacker and have gotten admissions and had even gotten stipulations signed without any difficulty whatsoever.

Q Mr. Bader, do you recall that you were before Judge Owen in this matter on September 20th, 1974 on the argument of a motion?

A I presume I was if you tell me so.

Q Did you make the following statements to Judge Owen on that argument --

A September 20th?

Q On September 20th, 1974.

Did you tell Judge Owen that you had left your office on September 5th at about 3 p.m.; did you tell him that at the time you left Mr. Sands was with you at the time; did you tell Judge Owen that you then told Mr. Sands that if the answers of the other plaintiffs came in he should mail out the copies?

Did you make those statements on that argument to Judge Owen?

A I don't recall making such statements. And if I did, they are incorrect.

THE COURT: Mr. Bader, I have a note in the minutes of that day:

"If answers come in I want (you) to send answers out."

THE WITNESS: That's correct, sir. That's correct, sir. That statement that your Ho nor has made --

THE COURT: You told Mr. Sands to do that?

THE WITNESS: That answers come in to send them out?

THE COURT: Yes. Answers come in, want you to send answers out.

THE WITNESS: I don't recall saying that, your Honor, but your notes -- all I can tell you, sir, is that that is incorrect, that I did not give Sands such instructions. That's all I can tell your Honor. I mean, all I can tell you is that there has been a mistake made.

BY MR. ENO:

Q And after you made this statement to judge Owen didn't Judge Owen point out to you that that was not in conformity with Mr. Sands" affidavit where Mr. Sands had merely said that he assumed that he could send the answers out when he had received Mr. Randolph's answer?

A All I can you tell you is, sir, that I have been very upset about this entire situation, as you can under-

stand, and if I made such a statement to Judge Owen, then all I can tell you is that that statement is absolutely incorrect. And since I am under oath at this point, I have to tell the truth.

MR. ENO: I have no further questions at this particular time, your Honor.

THE WITNESS: Your Honor, could I give a statement in narrative --

THE COURT: You certainly may.

THE WITNESS: Thank you, sir.

I would like to introduce a letter which I have in my file from the Post Office Department. Your Honor has the original that I have given to you.

THE COURT: Why don't we use that.

THE WITNESS: Yes, but I want to give you my letter, I got the original letter back from the Post Office. I went to see the gentleman at the Post Office and got the original, because I think that's important to bring to the Court's attention (handing).

Could we have that marked?

THE COURT: Yes.

(Plaintiffs' Exhibit 1 was marked for identification.)

THE COURT: All right.

xx

THE WITNESS: And I also would like to submit a service standard notification that I received from the gentleman who had answered my letter, your Honor, which indicates that normal service standards would be a two-day delivery from California to New York.

May we have that marked?

MR. ENO: May I see that, your Honor?

THE COURT: You may (handing).

(Plaintiffs' Exhibits 1-A and 2 were marked for identification.)

xx THE WITNESS: Other than that, your Honor, I have nothing else.

THE COURT: All right, thank you very much.

You may step down.

THE WITNESS: Thank you, sir.

THE COURT: Unless you have some redirect examination based on that, Mr. Eno.

MR. ENO: No, your Honor.

(Witness excused.)

MR. ENO: I would like to call Mr. Sands.

THE COURT: All right.

- -

MERRILL SANDS, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q What is your address, Mr. Sands?

A Pritton Hill Road, Brookfield Center, Connecticut.

Q Do you have any other address?

A No, I do not.

Q What is your occupation?

A Real estate broker.

Q Do you work for anyone?

A My own firm.

Q What is your style?

A Stir Realty, which I am a principal of.

Q Who else is associated in that business with you?

A I have a partner, Nicholas Marando, of New Milford, Connecticut.

Q Do you have any employees in the office?

A Only associates.

Q How many associates?

A Two others.

Q What are their names?

A One is -- well, let's see, his name is Tew, is

his last name, and -- well, there is only one other at the present time. The other one left about a couple of weeks ago.

Q How many hours a day do you spend at your business usually?

A At the office itself, you mean?

Q Yes.

A Not very many. Couple of hours a day at the office itself.

Q Then are you occupied in your business the rest of the day?

A Usually going around the area. I still do maintain another business, the Eastern Fur Products Company, Incorporated, which I am vice-president and treasurer of.

Q Where is that located?

A Danbury, Connecticut.

Q Danbury.

A That's the adjoining town.

Q Do you keep diaries?

A No.

Q You have no recordo of your whereabouts on any particular day?

A No, I have never kept diaries.

Q Do you have a secretary?

A No, secretary.

Q Either in the Danbury place of business or in the Brookfield place of business?

A No, the Danbury one is virtually a shell corporation now because the properties were taken over by the redevelopment agency.

Q What is the address of the Danbury --

A Only a Post Office box, 829, Danbury, Connecticut.

Q You have no offices at all?

A No. I do have places where material are kept, properties that we own, but there is no employees or anything like that since -- for about a year now.

Q How long have you been with the League?

A Three years I'd say.

Q You direct its litigation?

A I'm secretary of it, I wouldn't say I direct it, no. Gordon, Richard Gordon I'd say is really -- he is president, he's really in charge.

Q I show you an affidavit which has been marked as Exhibit G, and I ask you whether you executed the affidavit (handing).

A That's my signature.

Q That is your signature?

A That's right.

Q And in that affidavit did you make the following statement:

"I am controlling the strategy of this litigation and my attorneys are carrying out my instructions."?

A On this particular one, yes.

Q On this particular one?

A On this particular one, yes.

Q Why this particular one particularly?

A Because Randolph was a friend of mine.

Q When did you first meet Mr. Randolph?

A Oh, his father is a physician in Danbury, and I have known him quite a length of time. Met him down stock offices and that.

Q Where did you execute this affidavit, Exhibit G?

A I think this is the one I -- what's the date on this one? I don't remember where this particular one was.

Q You have no recollection at all?

A Wait a minute. This is the 17th of September? That's -- I believe we met at the A & P on Route 684, it's off 684. I think he said 687, it's 684 in Golden's Bridge.

Q Did you read it before you signed it?

A Yes, I did. It was in the evening and it was

in the car and we used the light in the car, but I did read it.

Q Is it true?

A Yes, it was.

Q Where were you on September 5th, 1974?

A Well, I came to New York that day.

Q What time did you leave your home that morning?

A Back when I had the factory, I'm a guy gets up 5.30, 6 o'clock every day, I always did for years when I had a factory, and I just don't get out of the habit. The factory's been gone a year and a half now, and I still get up at 5.30, 6 in the morning.

Q When did you leave your home to come to New York that day?

A I'd say about 6.30, quarter to seven.

Q How did you travel to New York?

A I drive down to North White Plains usually, leave the car there and then take the train in.

Q What train did you take on September 5th?

A That as the seven -- they leave I think at 7.50 -- I think it's 26 after the hour and 20 of the hour. They leave -- it was the one just before 8 o'clock there, twenty of eight or something like that.

Q Where did you go when you came to New York?

A Grand Central.

Q Where did you go from Grand Central?

A From there I went and I went to a little restaurant there and had some coffee and Danish.

Q Then where did you go?

A To Mr. Bader's office.

Q Did you have an appointment with Mr. Bader?

A Yes, I did.

Q When did you make that appointment?

A A couple of days before he had spoken to me and he had said that he had some papers that had to be signed definitely by that Thursday, I believe it was a Thursday, the 5th, and could I meet him.

Well, one night I couldn't meet him, I think it was Tuesday, there was a planning or zoning meeting up my way, and one night he couldn't meet, and I said, look, I have to go into New York on Thursday anyway, so I went to his ofice in the morning.

Q And you arrived there at what time?

A I'd say it was 8.30.

Q Was he there then?

A Yes, he was.

Q Will you tell me what transpired?

A Well, we talked a little bit about Teleprompter

and he said he had to have these -- gave me the papers to sign on behalf of the League, which I did.

We spoke a little while and he was quite disturbed. He said he was busy as the devil and planning on going away, I think he said to St. Louis that afternoon or evening, and he was pretty much in a hassle. He had to get the papers out and so, well, after I signed these we put the ones I signed into a large manila envelope, and there were a couple of other manila envelopes there that he had there that he sealed up at the same time. Put them in three or four large manila envelopes, and we stamped them, and I held them there and he had at that time an open envelope on his desk, and it had, he showed me, he said, these are the -- I believe he said, copies of interrogatories on the Teleprompter, and he had them in the envelope there and he had a stamp on it. I remember that, but it wasn't sealed.

He said, these have to go out today, but they can't go out until the answers arrive. And he was going to wait around for a while, and he said, look, where are you going to be today? And I said, well, I'm going down to the fur district down on 27th Street -- that's still from the fur days, I go down that way, look around once in a while. And I said, well, I am going to be here all

day anyway, and besides I was looking for a mortgage for a shopping center, I wanted to see if any of the banks around -- our banks have been pretty tight on mortgages, and it's a large mortgage for A & P in New Milford, and I thought maybe some of the banks or insurance companies or mortgage brokers might be helpful around here. I found they weren't.

But, I said I would be in town most of the day.

And he said, well, this is a little later on, I'd say it was after nine at that point, he said, look, you could do me a favor. If you are going to be in town all day could you drop by at the office at around 4 o'clock or so and I will give you a call back and you can let me know if the answers on these Teleprompter things show up.

I said, fine, no problem at all. I will come back to your office. And he said, well, I will call you up. He's got two telephones there, and one of them is the 61, and that one only rings, no answering service or answering machine or anything, secretary doesn't answer that one.

He said, I'll call you on the 61 line and that way you can pick up the telephone and you will know its me.

I said, fine.

So I left the office, I took these manila -- I don't see anything as big -- they were big manila envelopes,

and I mailed them on my way out. That was in the morning of the 5th.

Q What time did you leave the office?

A I'd say it was before 9.30.

Q Were there any other envelopes there that were on Mr. Bader's desk?

A With due respect to Mr. Bader's desk, have you ever seen it?

Q Just answer my question?

A Well, the desk is a little cluttered, putting it midly. The desk is kind of covered. You don't see much desk.

Q So you didn't see any --

A There were a lot of envelopes, a lot of legal folders and that all over the desk.

Q Where did you go when you left his office?

A I went down to 27th Street.

Q With whom did you meet on 27th Street?

A Didn't meet. I went to see a fellow by the name of Sol Sturman, and he wasn't there. I stopped by a place called Shad by-products and they weren't there. Went, stopped in the stock office somewhere there, brokerage house, just to look and watch the ticker for a while.

Then it got being noontime and I ate. Basically

that's down in the fur district there. I just wandered through the -- like down near skins trading, like 27th, 38th, 29th, 30th Street.

Q What time did You get back to Mr. Bader's office?

A I came back up that way about a quarter of four I'd say it was.

Q Did you meet anybody between the time you left the office and the time you came back?

A Did I meet anyone?

Q Yes, did you have any appointments to meet anybody in New York?

A No, no appointments to meet anybody.

Q Did you meet anybody?

A I went -- I made a lot of phone calls.

Q I didn't ask you that.

A I went into a phone booth -- well, I'll tell you what I did, I went down and I called about five different banks asking about mortgages, I stopped in, I called a place, some mortgage brokers, I called up also to find out if I could arrange for this mortgage.

Q Did you meet anybody face-to-face?

A A person that I knew you mean?

Q Yes.

A No one really.

Q Can you give us the name of anybody you met face-to-face?

A No. Of a person that I met?

Q Yes. Face-to-face. In New York that day?

A An individual?

Q Yes.

A I can't tell you his last name. I could tell you it was Sturman, Sol Sturman.

Q Where is he located?

A 27th Street.

Q Who is he?

A He has a fur business.

Q What was your occasion to see him?

A Oh, I had sold him earlier in the year quite a bit of rabbit skin waste, and I was looking for muskrat hair.

Q How long a time did you spend with him?

A Maybe an hour.

Q When you left the office of Mr. Bader his secretary hadn't come in, had she?

A No.

Q And when you came back to his office his secretary had already left, hadn't she?

A There wasn't anyone there, no.

Q So nobody saw you in Mr. Bader's office except Mr. Bader; is that correct?

A No, I believe when I went by the office the associate there I think saw me. I'm pretty sure I saw him sitting at the desk, Mr. Scher.

Q He is Mr. Bader's associate?

A Well, he has the same office, I should say.

Q He is not associated with Mr. Bader?

A Not, not associate, that's incorrect.

Q But Mr. Bader's secretary didn't see you at all that day?

A No, sir.

Q You did not see her?

A No, I did not see her.

Q When you came back to the office what did you find?

A Well, when I come into the office where his mail is there's a -- it says on the wall, it says, "Bader & Bader and the mail is in like a stack there, it gets put on a stack, and there were a couple of envelopes there, including one of whom was from California from Randolph --

Q Will you describe this? When you come in Mr. Bader's office what do you see there?

A The first thing you see?

Q Yes.

A That would be a, I guess it's a desk or a table.

Q There are two desks there, aren't there?

A Not when you first walk in.

Q Are you sure? Isn't there a desk on the right side and a desk on the left side when you come In the office?

A You walk in there's a desk right there, there's a wall there, and I think there's a file cabinet on the right.

Q Don't you come into a space where there are desks for two women?

A No, beyond the cabinet, beyond this table there's a desk, but not when you first --

Q In the outer room I'm talking about?

A The outer room when you first walk in there's like a table.

Q Is that where the letter was?

A On the right-hand side, yes.

Q It was just resting there?

A Well, there was mail with it.

Q Did you go through all the mail?

A Just the stuff on top, saw the letter from California which is the one --

Q Right on the top?

A No, it wasn't. I went through so it couldn't have been on top.

Q What kind of an envelope did it come in?

A I really -- I think it was a regular envelop. I didn't associate any importance to the envelope except the name on it.

Q Did you open the letter? Did you open the envelope?

A Yes, sir. Not there. Not there. I went into Mr. Bader's office to wait for his phone call.

Q You carried it in?

A I carried -- wait a minute, no. Yes, I carried it in.

Q Unopened?

A That's right.

Q Then what happened?

A Well, I ripped it open in his office there and saw Randolph's name was on the thing, and then I waited for his phone call on the 61 line.

Q What did you do with the envelope in which the interrogatories --

A There was a basket there, I just threw the envelope aside and put the interrogatories right there on

his desk.

Q Then what happened?

A I got a telephone call on 61, he called in at four, quarter after four, some time a little after four it was. And I said, you don't have to worry, the Teleprompt answers are here.

He said fine, good.

I said, go, have a good trip now.

He said, good. That's it. Hung up.

Q You say you were directing strategy in this case; is that correct?

A When you say strategy, you mean --

Q No, you said strategy, I didn't.

A Well, part of it, yes. I'd say that.

Q You knew that more than Randolph's answers were due, didn't you?

A No, I was on Randolph --

Q No, I'm ask you now, you knew that there were answers due not only from Randolph but from Fagan and Michael?

A I never even knew who this Michael was, really.

Q Well, you are directing the strategy in this lawsuit, you said, in your sworn affidavit. I will read it to you:

"I am controlling the strategy of this litigation and my attorneys are carrying out my instructions."

Isn't that what you said?

A Well, that doesn't mean that -- I don't do the legal part of it, when you say strategy. It has to do with the basics of it, not the technical --

Q Well, didn't you know at that time, and didn't Mr. Barter tell you that he was required to serve answers by Fagan and Michael?

A No, he said he needed the answers for the Teleprompter case that day.

Q And he didn't tell you what answers?

A No, he just said the answers.

Q He didn't say anything else?

A That's all he said.

Q Now, will you go on with your story as to what happened?

A Well, after I spoke to him I took the envelope that was there, I said, boy, good thing you came in, sealed it, put it in -- went out the door, sealed it, put it in the mail chute out there.

Q In the mail chute?

A That's right.

Q What time did you put it in the mail chute?

A Twenty after four, maybe it was. Some time around there.

Q Did you see that when you mailed them you were mailing unconformed copies of answers other than Mr. Randolph's?

A I didn't open the envelope. I just sealed it and mailed it.

Q So you didn't know what was in the envelope when you mailed it?

A Well, in the morning he said those are the things that have to go out.

Q And he didn't tell you to mail them?

A No, he didn't tell me to mail them.

Q What induced you to mail them?

A Because that's one of the reasons I went to his office in the morning was to sign so that my thing should be mailed out so I figured those had to go out.

Q You had him on the telephone, he was on the telephone?

A Right.

Q Important matter. You didn't say to him, "Should I mail them out?"

A No, I didn't.

Q You didn't. And he didn't say to you, "Mail them out"?

A He didn't tell me to mail them.

Q Did you notice the stamp, the postmark on the letter from Randolph?

A No, I did not.

Q You didn't. So you don't know when he mailed his letter?

A No, I don't.

Q Having mailed them did you let Mr. Bader know that you had mailed them?

A Well, let's see, this was on Thursday, I didn't get to see him until Sunday.

Q Did you tell him before that that you had mailed them?

A Tell him what?

Q That you had mailed them?

A I didn't see him until Sunday.

Q But did you before that tell him that you had mailed them?

A Before Sunday?

Q Yes.

A I hadn't seen him, how could I tell him?

Q You could tell him on the phone?

A I hadn't spoken to him between Thursday and Sunday.

Q You didn't leave a note?

A Didn't leave anything.

Q Didn't you think that he might be looking for these things and wondering where they were when you had put them in the mail?

A Not really. I saw the envelope with the stamp and I really thought he meant for them to go out.

Q When did you speak to either Mr. Bader or his secretary about mailing them?

A About mailing them?

Q Yes. About the fact that you had mailed them?

A Oh, this happened, well, if this was Thursday, it would be that Sunday, a week after that, the following Sunday.

Q He didn't try to get hold of you to try to find out what happened?

A No, we spoke during the week and he told me, oh, I think it was on a Thursday or a Wednesday of the following week, that he was having a -- I think it was Thursday -- he said, boy, was he having big problems on Teleprompter. He said they are breaking his back on it.

I said, well, you know, fight it out.

Q Did he tell you what was wrong?

A Not until Sunday, really.

Q What did he tell you on Sunday?

THE COURT: Sunday the what?

THE WITNESS: That would be --

THE COURT: The 15th?

THE WITNESS: Yes, that would be the 15th. If it was the -- yes -- no, would that be the 15th, a Sunday, or --

MR. BADER: I think the 15th would be a Sunday.

THE WITNESS: 15th would be a Sunday, that's right.

A (Continuing) That day I spoke to him and he told me, he says, boy, I'm having a hot time on the Teleprompter answers, he says, they are breaking my back.

I said, what happened?

He says, well, he says, I have had it out with my secretary, I told her she must have mailed those answers without telling me and she denies it.

I said, I told him, I said, I mailed them, and there was a little discussion between us at that time.

Q Did you speak to Mr. Bader at any time between the 5th and the 15th?

A Yes, I did.

Q When did you speak to him?

A I'd say that on the -- either the 13th or the 12th, 13th, 14th, could be either one of those days.

Q What was the subject of that conversation?

A Well, we had a couple of other things going on.

Q I mean about this case?

A We were talking about othe things, and on this every time when I spoke to him on Teleprompter he said, boy, he's having a terrible time on it.

Q Now, as I understand your testimony when Mr. Bader left on the 5th he knew you were coming back into the office to see whether the answers had arrived; is that right?

A That's right.

Q And that he learned some time subsequently that the unconformed copies had gone out; is that correct?

A Well, he -- you mean before he asked me?

Q Yes.

A Yes, he must have found out.

Q And he spoke to you some time before the 15th: is that right?

A Right.

Q And it wasn't until the 15th that he thought to ask you, were you the one who sent out the copies?

A That was the first time he asked me if I had mailed them, that's right. He said he was having a hot time with the Teleprompter answers, and I didn't really know what the basis of it was.

Q Mr. Bader has put in an affidavit here that there are irreconcilable differences between you and himself about this case; is that correct?

A That's pretty --

Q What are the irreconcilable differences?

A One of them is right here and now, because I feel this is a waste of my time down here, defending him on something which is of no value to me. I have been down here all day long, for example, having to chase down, frankly for nothing, that's the way I feel about it. I'm not an attorney, I'm not trying to tell any attorneys what, but as far as I am concerned this is a wasted day on my part coming down here battling out. It's got nothing to do with going, proceeding with a case, getting anything. At least I don't think it has.

Q It wasn't a waste of your time to spend the whole day of the 5th in New York in order to see whether the answers came in, was it?

A That was to get the case going. That was different.

THE COURT: Let me just be clear on this.

You mailed out this envelope not knowing what was in it?

THE WITNESS: Not till after, that's right.

THE COURT: Not knowing what was in it, not being instructed to mail it out?

THE WITNESS: That's correct.

before?

THE WITNESS: No, I can't say I have. And I assure you, your Honor, I'm never going to do it again, I can tell you that.

THE COURT: Did anybody ever come into your office and take something off your desk and mail it?

THE WITNESS: Yes, sir.

THE COURT: Without your instructing them to do it?

THE WITNESS: That's right.

THE COURT: Who?

THE WITNESS: It was a check.

THE COURT: Who?

THE WITNESS: It was my partner one day.

THE COURT: Your partner?

THE WITNESS: That's right.

THE COURT: I'm talking about somebody from the outside, some customer of yours. Has any customer ever come in and taken anything off your desk and mailed it?

THE WITNESS: Not that I recall, no.

THE COURT: Go ahead, Mr. Eno.

MR. ENO: I don't think I have any further questions on this, your Honor.

MR. BADER: I have no cross, your Honor.

THE COURT: All right.

Mr. Sands, you may step down.

(Witness excused.)

MR. ENO: I have one witness I would like to call for just one minute.

THE COURT: I will entertain your motion to call Mr. Bader's secretary at a time to be agreed upon. Also in connection with that I think we should have at this point the affidavit that Mr. Bader says she has prepared.

MR. BADER: Yes, sir.

THE COURT: Go ahead.

- -

H E N R Y T. M E A D E , called as a witness in behalf of defednant, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. ENO:

Q Mr. Meade, would you give us your address, please?

A 765 Cortlandt Avenue, Bronx.

Q Mr. Meade, by whom are you employed?

A U. S. Post Office.

Q What is your position with the U. S. Post Office?

A Foreman, delivery and collection.

Q With what station are you associated?

A I am connected with the General Post Office.

THE COURT: Where is the General Post Office? Is this the old Penn Station area?

THE WITNESS: 33rd Street and Eighth Avenue.

THE COURT: All right.

Q Are you here in response to a subpoena that was served upon you or upon the Post Office?

A Upon the Department.

Q Upon the Department?

A Yes, sir.

Q Have you brought with you certain departmental records?

A Yes, sir.

Q Do you have the originals, Mr. Meade?

A Yes, sir.

MR. ENO: Your Honor, I would like to use the copies of these records because Mr. Meade says he needs these.

THE COURT: Surely.

Mr. Bader, you may examine the originals and assure yourself that the copies are true copies, and we will let the gentleman take his originals back with him.

MR. BADER: Yes, sir.

BY MR. ENO:

Q Mr. Meade, I show you a card and ask you what this card is (handing).

A It's a 1260 form.

Q Will you tell us what --

A It's used as a time card. We are on what we call PSDS, Postal Service Data Section. Man has a rate, if it fails to register the carrier uses this card and writes his time in and it's verified by a supervisor.

THE COURT: I fail to follow this, I am sorry.

MR. ENO: Your Honor, if I may just ask a few leading questions.

THE COURT: All right, go ahead.

Q Is this card that you have produced the time record of a particular carrier?

A Yes, sir.

Q Who is the particular carrier?

A LaPorter.

Q Was he assigned the delivery of mail at 274 Madison Avenue?

A He was one of four men on the route. I can't say that specific building.

Q I see. He was one of the men on the route?

A That handles 274 Madison Avenue.

Q Is this the time card of Mr. LaPorter for September 5, 1974?

A Yes, sir.

MR. ENO: I would like to mark a copy of that, if your Honor please.

THE COURT: You may.

MR. BADER: May I see that time card, Mr. Eno, please?

MR. ENO: Here you are (handing).

(Defendants' Exhibit L was marked for identification.)

xx BY MR. ENO:

Q Can you tell me who the names of the other carriers on that route on September 5, 1974 were?

A One is Mr. Krum, Mr. Gilchrist, Mr. Gettings.

Q Do you have a record to show when Mr. Krum, Mr. Gilchrist and Mr. Gettings signed off that day?

A Mr. Krum signed off at 1451, which is Navy time.

Q What is that in --

A 2.31 p.m.

Q 2.31 p.m. That was when he signed out from the Post Office, is that correct?

A Finished for the day, right.

Q When did Mr. Gilchrist sign out from the Post

Office?

A 12.06 p.m.

Q And when did Mr. Gettings sign out that day?

A 2.27 p.m.

Q And when did Mr. LaPorter sign out?

A 2.30.

Q Those were the times when they had already made their deliveries inthe area and had signed off for the day and left for the day; is that correct?

A They were finished for the day, yes, sir.

MR. ENO: Your Honor, I would like to have this heetsmarked that Mr. Meade has testified to.

MR. BADER: I have no objection, your Honor.

THE COURT: I may be recieved.

(Defendants' Exhibit M was marked for identification.)

MR. ENO: I have no further questions.

THE COURT: Let me understand.

Exhibit L marked for identification --

MR. ENO: If your Honor please, Exhibit L marked for identification is the card of Mr. LaPorter, and it develops that he was the last man out that day. There were three other men who made deliveries during the course of September 5th. Their names appear between the lines

on Exhibit M. And Mr. Meade has read into the record their sign-out times. So that it would appear that the last man to sign out who made regular deliveries on September 5th, signed out from the Post Office at 2.30 in the afternoon, and he had completed his delivery by that time.

THE COURT: And Mr. LaPorter here, what does "ET" mean, Mr. Meade?

THE WITNESS: End time.

THE COURT: That is 1450 which is what, 2.50?

THE WITNESS: 2.30, sir. It's a hundred-unit clock.

MR. BADER: It's a 24-unit clock, isn't it?

THE WITNESS: It's a 100-unit clock, 24-hour clock.

THE COURT: So the 1450 means 2.50?

THE WITNESS: 2.30, sir.

THE COURT: Where does the 20 minutes come in?

THE WITNESS: Oh, it's --

THE COURT: I see what you are saying. Of course. Of course. Very good.

THE WITNESS: It's 12.25 --

THE COURT: I understand. I see. And you LaPorter, he is the last man to work that day and he signed

out at 2.30 in the afternoon having completed all his duties and presumably having washed his hands, hung up his bag, changed his uniform --

THE WITNESS: Well, the one above shows where he got all that. He came back to the station at 2.09.

THE COURT: I see. Then he signed out at 2.30.

THE WITNESS: Right.

THE COURT: I understand.

MR. BADER: May I ask a couple of questions?

THE COURT: This should be received in evidence, it is only marked for identification at this point.

(Defendants' Exhibit L was received in evidence.)

CROSS EXAMINATION

BY MR. BADER:

Q I'm a little confused about this matter and I hope you can help me.

Does this record of yours indicate that -- well, what does your record indicate that the last time that a delivery could have been made on September 5th at 274 Madison Avenue would be? The very last time.

A That doesn't indicate what the very last time would be.

Q No, I'm very badly confused now and I hope you can help me. The reason that Mr. Eno wanted this information was that he wanted to know what time -- he is trying to find out what time the last delivery was made at 274 Madison Avenue on the 5th of September. That is what he is trying to find out.

A This indicates the ending times of the carriers for that route.

Q Yes. Well, that would mean therefore that by 2.30 Mr. LaPorter, the last carrier, would have returned to the Post Office?

A Yes, sir.

Q And that would mean that the last delivery that day must have been before 2.30?

A Yes, sir.

Q And how much before?

A I can't say, sir.

Q Would it be five minutes, ten minutes, an hour, two hours, three hours?

A Ten minutes -- no, it's more than -- he come back to the Post Office at 2.07.

Q So that therefore what would be the last possible time that he could have made that delivery in your opinion?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

A 1.30, 1.45.

MR. BADER: 1.30, 1.45. Thank you.

No further questions.

THE COURT: Mr. Eno, do you have any further questions?

MR. ENO: No further questions at this time, your Honor.

THE COURT: All right.

Mr. Meade, thank you, sir. You may step down.

(Witness excused.)

THE COURT: Now I think it would be appropriate to have Mrs. Blacker, do you agree?

MR. ENO: I agree with that, your Honor.

MR. BADER: Could we have her on Tuesday, Wednesday and Thursday, your Honor?

THE COURT: Well, Mr. Eno, I think if we can, let us oblige her. What would you say some time later this week or next week?

MR. ENO: Your Honor, I'm out this week.

THE COURT: All right, then we will have it next week.

MR. ENO: The 13th and 14th would be fine for me, your Honor. Either one of those days.

THE COURT: Well, let's make it the 13th at

4 o'clock. Is that agreeable?

MR. BADER: All right.

THE COURT: Now, Mr. Bader, do we need to serve a subpoena?

MR. BADER: Well, the problem is I hope I can get her. If not I will let Mr. Eno know and I presume he could serve a subpoena, I would arrange for it. You see, that's beyond her time. Of course I will have to pay her extra for it, but that's the problem we have.

THE COURT: Well, I want to assure all of us that she will be here. Now, what does it take to do that?

MR. BADER: Well, I will speak to her tomorrow.

THE COURT: I would be distressed if you were to report to me at 4 o'clock on Wednesday the 13th that she had gone home.

MR. BADER: I wouldn't do that, your Honor. I will check with her tomorrow. She's coming in and I'll check the date and I'll tell her that I certainly would appreciate her being there, and if she isn't there, then I will have to inform Mr. Eno and he will subpoena her. So that --

THE COURT: Well, you will have to inform the Court and I will act appropriately.

MR. BADER: Right, I understand that, your Honor.

THE COURT: All right.

This Court stands in recess until Wednesday, November 13th, at 4 o'clock.

(Time noted: 6.15 p.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
I. Walton Bader	3			
Merrill Sands	62			
Henry T. MEADE	86			

EXHIBIT INDEX

Defendants	Identification	In Evidence
A	6	
B	9	
C	11	
D	11	
E	11	
F	13	
G	23	
H	35	
I	35	
J	36	
K	36	
L	89	92
M	90	
Plaintiff's		
1	60	
1-A, 2	61	

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

vs. 73 Civ. 4133 (LF

TELEPROMPTER CORP., et al.,

Defendants.

----------x

Before:

HON. RICHARD OWEN,

District Judge.

New York, November 13, 1974,
4:30 p.m.

APPEARANCES

I. WALTON BADER ESQ.,
Attorney for plaintiffs

ROSENMAN, COLIN, KAYE PETSCHEK, FREUND & EMIL, ESQS.,
Attorneys for defendant Touche, Ross & Co.
BY: LAWRENCE R. EMO, ESQ., and
MARVIN PICHOLZ, ESQ, of counsel

- -

BEST COPY AVAILABLE

MR. BADER: I have Mrs. Blacker, your Honor.

THE COURT: Yes, Mrs. Blacker, thank you for coming.

Mr. Eno, would you like to ask Mrs. Blacker?

MR. ENO: I also have two other short witnesses.

THE COURT: All right.

MR. ENO: Then I'd like, with the Court's permission, to ask Mr. Bader a few other questions.

MR. BADER: All right.

THE COURT: Very good.

MR. ENO: And I'd like to make a statement under oath, your Honor.

D O R O T H Y B L A C K E R, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q What is your address, Mrs. Blacker?

A 9411 Shore Road, Brooklyn, New York.

Q What is your phone number?

A I prefer not to give my phone number. It's just a personal thing.

Q Would you please give your phone number?

MR. BADER: Your Honor, I will object for the record. If your Honor orders it, all right.

A I mean it's just personal. I don't give my phone.

THE COURT: Mrs. Blacker, this is not going to be disseminated to the public so I think it is appropriate.

THE WITNESS: All right. I mean, as a rule I don't give my phone number.

THE COURT: All right.

A Very good. I believe it is 833-9071. Offhand I am nervous. I don't recall it too well.

THE COURT: If possible.

Q You don't recall your phone number?

A I'm nervous and I mean I --

Q Don't be nervous.

A Well, let's see if I can find it. I have written it.

Yes, it's 833-9071.

Q Are you in the phone book?

A No, unlisted.

Q Are you married?

A Yes, I am.

Q What is your husband's name?

A Phillip Blacker.

Q Are you employed by Mr. Bader?

A I am.

Q How long have you been employed?

A In February it will be six years.

Q Six years?

A Yes.

Q And you are his secretary, is that correct?

A Yes.

Q Did you ever give Mr. Bader your address?

A Yes.

Q Did you ever give him your phone number?

A No, I didn't.

Q When you get withholding statements, W-2 forms, is your address on those statements?

A Yes.

Q What are your duties as Mr. Bader's secretary?

A Primarily steno and typing, primarily, and Dictaphone work, answering the telephone.

Q Do you do filing for him?

A Not at all.

Q You don't?

A Not at all.

Q You don't manage the files?

A I don't think I have ever been to the files; maybe once or twice. I mean there is that much stenographic work and Dictaphone work.

Q Do you take care of his mail?

A No. There is not enough time for that.

Q Not enough time?

A No.

Q Do you ever open any letters addressed to him?

A Very, very rarely, very rarely.

Q On what occasions would you open letters for him?

A If I had no stenographic work, which would be unusual, very unusual.

Q Who opens his mail?

A Mr. Bader does personally.

Q Anybody else?

A To my knowledge, I don't know.

Q What days of the week do you work for Mr. Bader?

A Tuesdays, Wednesdays and Thursdays, and I have never worked any other days of each. And from the time -- would you like the time?

Q Yes, what are the hours?

A From -- flexible, from 10 to 3 or from 10:15 to 3:15. In other words, a five-hour day, depending if I get in at 10 to 3 or 10:15 to 3:15. A five-hour day.

Q I see. Do you ever work from 10 to 3:30?

A Yes.

Q Is that your more usual time of work?

A Well, I would say the usual is about 10:20, 10:15 is more usual.

Q You submitted an affidavit in this matter, did you not?

A Yes, I did.

Q In that affidavit didn't you say that you worked from 10:30 to 3:30?

A Well, I should have been more flexible. The truth is it varies from -- I very rarely, if ever, get in at 10. I would say it is more apt to be around 10:20, but it could be 10:30 to 3:30 too.

Q Do you work for anybody else?

A No.

Q You don't work Mondays and Fridays for anybody else?

A No.

Q Could you describe generally the setup in the office of Bader & Bader?

A Yes. It's a large suite of offices, and when you walk in you have the main office with the secretary for another gentleman, the mail is delivered in that main office, and the people are received in that office. Now, my office is about --

Q Just a moment before you proceed. How many desks are there in that office?

A There are two, two desks.

Q One behind the other?

A Yes.

Q And are there any other tables or desks in that office?

A Well, there are small tables with diction- -- I mean I very rarely stop in that office. I rush through to mine. I am very busy and have no time to --

Q You have been there for six years?

A Yes, yes. There are small tables with plants and dictionaries on them.

Q Is there a conference table or something like that?

A Not in the front office, no.

Q Then where do you go after you get into the main office, into the main room, reception room.

A Well, it is almost three-quarters of a block, at least it seems that way, to my office, which is the last office in this suite of offices.

Q When you come into the reception room what do you do, take a left turn?

A Yes.

Q And then you take another left turn?

A Yes.

Q Where is your office?

A At the very end. The last office at the end.

Q How many offices are there between the reception room and your office?

A Let's see, there is one, two, three that would be, four. Four.

Q Four?

A Four, four.

Q Who are the other people in that suite of offices besides Mr. Bader?

A There is a patent attorney, Mr. Scher. He has a secretary full time.

Q What is her name?

A Diane. I don't know her last name. She

is not here too long. He's had quite a lot of secretaries.

Q Who else is there?

A And he has a part-time bookkeeper, who I understand comes in Mondays through Fridays and works I think from about 10 to 2, approximately.

Q What is her name?

A Barbara.

Q Barbara what?

A I don't know her last name. We use first names and I don't know her last name.

Q Anybody else in the office?

A No. At the present time, no. At one time there were other people.

Q Who are the other people? How long ago were there other people in the office?

A Oh, I don't remember exactly, but, say, about maybe three years ago.

Q I see.

A There was a gentleman was there. I think he did art work or something. He had an office there.

Q At least from the beginning of this year, the only --

A Were these people.

Q The only people in the office were Mr. Scher, Mr. Bader, Mr. Scher's secretary, bookkeeper, and yourself, is that correct?

A Right, right.

Q Where is Mr. Bader's office?

A Well, Mr. Bader's office is -- you walk in, you have a main office. You go round the bend, you have another office, and Mr. Bader's would be about the fourth office, and --

Q Is it next to yours?

A Not really, no. There's a -- a little walkway from mine. There is another office in between ours.

Q I see. I show you some documents that have been marked as exhibits here, Exhibits A, C, B and E.

A Yes.

Q Did you type the originals of those documents?

A Yes, I did.

Q And did you make those copies that are before you at the same time that you made the originals?

A Yes, I made copies, right.

Q Did you type them all the same day?

A I did.

Q Do you remember what day you typed them?

A Truthfully, no. Days, dates, I don't remember.

Q If you look at the ones -- not the large one -- if you look at the smaller ones, you will see on them a date of August 29th.

A Correct, right.

Q Does -- pardon me.

A Yes, I see that.

Q Do you see that date?

A Yes.

Q And it is also on the other two. Do you see that?

A This one doesn't seem to -- this one has it, two of them have it. What is this one? This one is Michael Fagan. I see. All right, that one, right, okay. And that one is Michael. Yes, I see them, right. Yes.

Q Does that refresh your recollection as to the date you testified -- and I don't mean for you to just adopt that date -- but does it actually refresh your recollection as to the date you typed it?

A Yes, because I do remember typing them and sending them out, the originals out, that day. I mean the day they were typed, in other words.

Q Will you look at the date of the large one?

A Yes.

Q What's the date on that?

A The date on the large one? This is September 5th, it says on this.

Q Can you tell me how the date September 5th came to be on the large one?

A Well, let's see.

Q That is Exhibit A.

A This is Exhibit A.

And this is to the defendant Touche Ross, right?

These are to Martin Randolph, Gary Michael, and Michael Fagan. Well, I read these three as bearing the date August 29th. These are the interrogatories I remember.

This I can hardly recall already. This was obviously not done on the same day.

Q I am asking was it done on the same day or wasn't it done on the dame day?

A Obviously not, no.

Q When did you type the one that has the date

September 5th, which is Exhibit A?

A That I cannot recall. I don't recall that one. These I do recall.

Q Did you type that on September 5th?

A At this moment I couldn't say yes or no.

Q Do you have any recollection as to how the date September 5th came to be on Exhibit A?

A I assume it was September 5th when it was typed. I don't remember.

Q After you typed the originals of those four documents what did you do with the originals?

A I remember mailing these -- these three I recall. I mailed them to the people in question, Randolph, and whatever their names are, Fagan, I remember mailing it to them, the originals.

Q Those are Exhibits C, D and E?

A Right, yes.

Q Go on, please.

A I remember mailing the originals to them.

Q Do you remember when you mailed them?

A Yes. I remember mailing them the day that I typed them, so that if it says August 29th, then that would be the day that I mailed them.

Q What did you do with the copies that you

typed?

A Well, I I took the copies and I placed them in the file folder, and I typed envelopes up for each party and I put a note on the file that hold these until the originals come back, and then conform.

Q Who was that note to?

A I just, you know, I assume -- I have nothing to do with the files, as I say.

Q Yes, I understand that.

A So I left the file on his desk, and I assume -- you know, he does a lot and I wanted it to catch his eye, so that he would not mail them --

Q The copies were not in the envelopes?

A No. No, I placed the envelopes and the copies in the folders.

Q I see. What did you do with the original of Exhibit A? That is the big one.

A The original of Exhibit A, this I tell you I don't recall this one. In other words, these I can tell you I did mail the originals. I recall them. This I can see I typed them because it looks like my typing, it is my typing; but I don't recall the actual mailing or anything.

Q Forget the mailing, but do you recall what you did with the original of it?

A I do not.

Q Do you know what you did with the copies of that one?

A I do not.

Q Is this file folder that you put them in a regular manila folder, plain manila folder?

A No. I believe it was a green type of folder. It was not a manila. It was a green, heavy -- sort of a heavy file, a green folder.

Q A fiberboard folder, would it be?

A I think you could call it that. It was not manila.

Q You don't recall what you did with the original or copies of Exhibit A?

A This one, no. No.

Q When next did you see any of the originals of Exhibit A, C, D or E, do you recall?

A I did not see any of the originals because once I typed them, once I put the file on his desk, you could say I practically have no contact whatsoever with that matter because I have a great many other typing and steno and Dictaphone jobs after that. So that Mr. Bader more or less, you know, is in charge at that point. I have nothing to do with the follow-up in

any respect whatsoever.

Q So you never saw the originals of C, D and E after you mailed them to the people to whom you sent them?

A No, I never did.

Q You never saw them?

A No.

Q When did you next see the copies of C, D and E?

A I don't remember seeing the copies again.

Q You never saw the copies again?

A No, no.

Q And after you had typed Exhibit A do you remember when after you typed that you next saw either the original or any of the copies?

A No.

Q You say that you put these in a file folder with a note attached to the file folder stating that these were to be conformed?

A Right.

Q With the original. Who told you that?

A Well, I think I had one previous experience where I know, I had learned that when you have something notarized you must conform the copies, and I remembered

that. I realized, you know, that you can't very well send copies out unless the people send them back and they are notarized. I mean, to me that was common sense. And I also remember possibly one or two instances where Mr. Bader might have brought that to my attention: I must conform copies, you know, where it is notarized.

Q Did you ever conform copies?

A I don't recall ever conforming copies. I may have but I don't recall it, because it doesn't -- the occasion did not arise as far as I can remember.

Q And did Mr. Bader give you any instructions with respect to the originals or copies of Exhibit A, C, D and E?

A No, he really did not exactly give me explicit instructions.

Q Did you ever mail any copies of Exhibits A, C, D or E? And I am talking about copies and not the original.

A No, I did not.

Q You did not?

A No.

Q Mr. Bader sent a letter to the court on September 11, 1974, which was marked as Exhibit B, in which he said that:

"On September 5th I had Mr. Merrill Sands, the secretary of the plaintiff Independent Investor Protective League, sign the answers to interrogatories," and he is talking about Exhibit A, I think.

A Yes.

Q "I further instructed my secretary to send copies of the answers to interrogatories executed by the Independent Investor Protective League to all attorneys for the defendants, and inspected these before they went out. They were properly conformed and there was no question that they were served in time."

That is in Mr. Bader's letter, is that correct?

A I don't really recall. I honestly don't. I mean I don't recall that particular one.

A This I say I remember exactly what I did. This one I really -- I mean I am just going to be guessing. I don't remember.

Q I show you this Exhibit B and ask you to look at the initials at the end of that letter and ask you whether you typed that letter.

THE COURT: This is the September 11th letter?

MR. ENO: Yes, your Honor.

A No, no, I did not type that letter.

Q Do you know who the initials are where the typist's initials are usually placed?

A I do not.

Q Did you ever see letters with those initials on it in your office or copies of letters?

A I may have possibly.

Q Do you know?

A I mean, as I say, I am so busy that I really don't, you know, have much more time than to do the actual steno-typing. I mean that's it. You can verify that with the other girls. I am extremely busy.

Q Did you ever see those initials on any other letters or copies of any other letters?

A I may have seen them. I don't know for sure.

Q Do you know whose initials they are?

A No, I do not.

Q Do you know who typed that letter?

A I do not because I know I didn't. That's not my typing.

Q May I have that back, please?

(Handed to Mr. Pino.)

MR. ENO: I wonder if the court has the original of Mrs. Blacker's affidavit.

THE COURT: I do.

MR. ENO: May I have that shown to her, your Honor, while I use the copy?

THE COURT: Yes.

(Document handed to the witness.)

Q This is the affidavit that you submitted, isn't it, Mrs. Blacker?

A Right.

Q Who prepared the affidavit?

A Well, we -- Mr. Bader told me, you know, what this was all about, and I said, you know, I saw no reason to go to court, you know. Why would I have to go to court? And I said, "Could I do you think it possible that I could submit an affidavit?" Because --

Q No, I didn't mean the reasons why you submitted the affidavit.

A Who prepared it?

Q Prepared it, yes.

A Well, I would say that I really -- I told Mr. Bader what I was going to say in it, and I would say I prepared it.

Q All right. If you look at page 2 you say

in the first sentence:

"One day I was given an assignment by Mr. Bader regarding the above-entitled case."

A Right.

Q What day was that?

A Well, now that you showed me these, I gather it was August 29th.

Q I am asking you what you meant, what you referred to when you made a statement in your affidavit.

A I said "one day."

Q That's right.

A I didn't say which day obviously.

Q I am asking you which day you referred to when you said "one day."

A Just a day. A day.

Q All right, if you can't make it any more specific than that. Is that right?

A That's right. I didn't really recall the day at the time I said it.

Q What was the assignment that you were given by Mr. Bader?

A As I recall it, it was a Dictaphone assignment.

Q What was it to do?

A And it was these, these.

Q To type up these answers to interrogatories?

A Right, right.

Q What did you mean in the second sentence when you said Mr. Bader subsequently left the office?

A I know that Mr. Bader was not there at the time I typed these. I don't remember exactly whether or not he was there when I walked in. That I can't vouch for. I do know that I did these from a Dictaphone, that I do recall, and I do know that he was not in the office, because when I did them I remember thinking I should check with him, but I know you are not supposed to mail the copies, you know.

Q What was the significance of your putting in the sentence in your affidavit:

"Mr. Bader subsequently left the office"?

What was the purpose of putting that in your affidavit?

A To bring out the fact that I had -- I remember that I had typed these when he was not in the office, and I remember that I had mailed them when he was not in the office. That was the idea. I know that he was not here when I did this.

Q What led you to put that into your affidavit?

What was the significance of the statement. What were you trying to impress the court with by that statement?

A That I had taken it upon myself not to mail the copies. That's the only thing I can think of why I would have put that in.

Q You can't remember now why you put that in. Did you have a discussion with Mr. Bader about that statement?

A No. As I say, I told Mr. Bader, you know, as much as I remembered about these, and I guess the only reason I put that in was to bring out that I took the liberty of putting the copies in the folder without asking.

Q Looking at your affidavit, and thinking about it?

A Yes.

Q Does this have any connection with the fact that the Exhibit A may have been typed by you on September 5th?

A I don't recall this one. I mean I don't recall anything that would make me remember when I typed it or -- now, what I mean, in other words, it has almost no significance to me as far as that goes.

Q September 5th was a Thursday. September

5, 1974, Mrs. Blacker.

A Yes.

Q Were you in the office that day?

A I must have been in the office because I am in on Thursdays, right.

Q You were in generally throughout the month of September on each Thursday?

A I was in, I have been in all the time on Thursdays, right.

Q What hours were you there on September 5th, do you recall?

A Well, as I say, the average time that I get into the office, I would say the average, is 10:20 -- 10:15 to 10:20 is average -- but I could come in a little earlier, I could come in 10 minutes later.

Q Can you tell me, if you can recall -- because this date must have been something that has been mentioned in view of these proceedings here -- what you did that day, on September 5th?

A Truthfully, no, I do not recall September 5th. It has no significance whatsoever to me.

Q Did you see Mr. Bader there that day?

A Frankly, I don't remember.

Q You don't remember?

A September 5th doesn't mean anything to me, nothing at all.

Q Did you know that there was a controversy existing with respect to the date of September 5th with Mr. Bader? Did Mr. Bader ever mention that to you?

A He did ask me if I remember where he was September 5th, and I said, and I say again, I told Mr. Bader, "I do not recall September 5th.

Q Shortly after September 5th did you have any conversation with Mr. Bader about what had occurred on September 5th?

A Not at all.

Q Never, nothing?

A Nothing, not at all. I mean September 5th doesn't mean anything to me except as recently, you know, when Mr. Bader asked me do I remember September 5th. I said no.

Q When did he ask you that?

A When? I don't remember exactly when but I do remember him asking, "Dorothy, do you remember where I was September 5th?"

I said, "September 5th means as much to me as July 24th or something. It doesn't have any signifi-

cance."

Q Do you remember Mr. Bader at any time telling you he was leaving the office to go to St. Louis?

A No, I do not. I do not recall it.

Q Do you ever remember him telling you that he was leaving the office to go to the New York Law Institute?

A In the past he has said that on occasion, but I wouldn't remember when he said it. He has gone and said, "I am going to the library," or something. Sometimes he is not even specific which library or what kind of library, you know.

Q Does he tell you where he is going?

A Truthfully, not too often. I mean he will -- if we have appointments in the appointment book I will know where he is, and that is not kept strictly either, but many times I will walk in the office and I will not know whether he is in or out or coming back, and if I see work on the Dictaphone and I put that on, then I very often will learn where he is. But other than that, I am not always sure where he is.

Q Do you know a man named Merrill Sands?

A Yes.

Q Have you met him?

A Not personally, no.

Q Have you ever seen him?

A No.

Q Spoken to him on the telephone?

A About three times or so, but not a conversation as such.

Q Have you spoken to him recently?

A Not very recently.

Q Has he spoken to you about the circumstances of September 5th?

A No.

Q He has not?

A No.

Q Your testimony is that after you typed those Exhibits A, C, D and E you had no conversation with Mr. Bader about those documents at all, is that correct?

A Correct.

Q Did he ever tell you that you should be on the alert to look for a letter coming from the people to whom you mailed the originals, that is, C, D and E?

A No.

Q He did not?

A I don't remember him saying that, no.

Q Did he ever tell you that September 5th

was the last day that he had under the court's order to serve the answers to those interrogatories?

A No.

Q You have already testified that you have never seen the originals of any of those answers to C, D and E, is that correct, even to this day?

A Correct.

Q Did you ever see an envelope from Mr. Randolph?

A No.

Q Did you ever see an envelope from Mr. Fagan or Mr. Michael?

A No.

Q No.

A No.

Q Did you ever see any answers from Mr. Randolph?

A No.

Q You have never seen them to this day?

A No.

Q Have you ever seen conformed copies of the answers of Mr. Randolph or Mr. Fagan or Mr. Michael?

A No.

Q Since you say you have never seen Mr. Sands, you never saw him in the office on September 5th, did you?

A No.

Q Were you in the office on Friday, September 6th?

A I have never been in on a Friday.

Q And you weren't in on Saturday, September 7th, or Sunday, September 8th?

A No.

Q Were you in on Monday, September 9th?

A No.

Q Were you in on Tuesday, September 10th?

A A Tuesday? I don't remember the date but I know if it was Tuesday, Wednesday or Thursday, I was there.

Q So you were there 10th, 11th and 12th?

A I wouldn't know by the 10th; I would know I was Tuesday, Wednesday and Thursday, if that was the 10th, 11th and 12th.

Q And you weren't there on Friday, the 13th?

A No.

Q Did you ever see any letters that my firm, and particularly myself personally, sent to Mr. Bader under dates of September 6th and September 7th by mail and under date of September 9th by hand?

A I don't recall.

Q I will show you copies of those letters --

A I don't recall.

Q -- and ask you whether you recall ever seeing those (handing).

That is Exhibits K and L.

A No, I do not recall this. I do not recall either of these, no. As I say, I very rarely, if ever, see letters coming in. It's only material I type that is going out.

Q Did Mr. Bader ever speak to you about the mailing of the unconformed copies of the answers of Messrs. Randolph, Fagan and Michael?

A Well, he did ask me -- I don't remember when he asked me -- but he said, "Did you mail those copies of the Tel ompter,"whatever they were,"interrogatories? Did you mail the copies to the attorneys?"

I said, "Why would I do that? I put a note on the file. Why would I mail them out after I put a note on the file?" I said, "Of course not."

Q Any other further discussion with Mr. Bader on the subject?

A He didn't say anything. I mean, I said, "Wouldn't that be ridiculous to mail them out after I bothered to type a note, 'Don't mail them out'?"

Q That was the sum and substance of the discussion?

A Yes, nothing else.

Q Nothing else?

A No. I mean I thought it was sort of a silly question to ask me if I mailed somethign out.

Q Do you remember when he asked you that question?

A I do not remember when, no.

Q Did he ever say to you that you had gotten him into hot water, or words to that effect?

A No, he merely asked me, "Did you mail them out?" I said -- I laughed and I said, "Why would I

conversation with him in some general area, if you can't remember specific dates? Was it within the last couple of weeks or before that?

A I'd say -- I don't remember when the conversation was. Truthfully, I mean it could not have been too long ago but I don'tremember him asking me. I mean, I was sort of proud that I had known enough not to mail them, I mean, so that when he asked me if I had mailed them, that's why I remember the conversation. I was saying, you know,"If I had the foresight to put the

note on the folder, why would you want to ask me if I mailed them," in other words. But I don't remember when.

Q Could you tell me again why you put that note on the folder? What induced you to do that?

A So that more or less maybe it would catch his eye. You know he has his desk piled high and the whole office is piled high with no filing system.

Q Why would you want to catch his eye? Why would you want to give him that message? Wouldn't he know that fact without the message?

A I wanted to sort of let him know that I didn't mail them either. He may have said, "Oh, my God, I forgot to tell her not to mail them. I wonder if she did." So I thought to myself, "I better put a note on here. He is not here so I better put a note on here telling him that I knew enough not to mail them."

Q You have typed many answers to interrogatories, haven't you?

A Well, I don't know many but I have typed them.

Q Quite a few, haven't you?

A Yes.

Q You are accustomed to put that kind of a note?

A Well, the ones that -- as far as I know, they have not had to be notarized. You know what I mean? This is like--

Q This is the first time you have seen notary --

A I don't even recall where, you know, I mailed interrogatories to someone and that they had to notarize them and mail them back. I don't recall too many instances, if any.

Q Did Mr. Bader ever tell you that Mr. Sands had been in the office on September 5th?

A Not as such, no.

Q What do you mean, as such?

A September 5th, as I say, does not mean a thing to me, not a thing.

Q Did he ever tell you that Mr. Sands had been in the office at or about September 5th, in that period?

A He mentioned later that Mr. Sands had been in the office. The date doesn't mean a thing to me.

Q When did he mention that to you?

A I don't remember specifically when he mentioned it to me, but I do remember him saying that Mr. Sands had come to the office.

Q Do you know how long after September 5th he mentioned that to you?

A No, I don't remember the dates, no.

Q Do you remember what else -- did he say anything else at that time when he mentioned that Mr. Sands had been in the office on September 5th?

A Well, I don't remember. As far as all I know is that he had asked me if I had mailed these. And when he asked me I said no, as I told you. Then that was it, that was the end of the conversation.

And then as far as him mentioning about Mr. Sands having been in the office, it wasn't until he actually told me that Mr. Sands had made copies to the attorneys.

Q When did he tell you that?

A I honestly do not recall exactly when.

Q Do you know how long ago from today he told you that?

A No, I do not recall. A few weeks.

Q You have no recollection? The last couple of weeks?

A This didn't mean that much to me personally. You must realize that.

Q Did he mention it within the last couple of weeks?

A I don't remember exactly when he told me.

Q You have no recollection at all?

A No. As I say, this doesn't mean that much to me that I am going to remember dates.

Q Did he ever tell you that Mr. Sands had been in the office to check his mail?

A No. No, he never did, no.

Q Do you remember speaking -- did you speak to me on September 10th?

A I don't remember the date, but I do remember speaking to you because you were angry. That's why I remember it.

Q Will you tell me what was said in that conversation? Did we have one or more than one conversation that day?

A We might have had two. As I say, normally, with all the work I have, and telephone messages, et cetera, I don't remember conversations as such; but the fact that you were angry I do recall.

What do you want me to tell you?

Q What was your conversation or conversations, as you recall it?

A Mr. Bader asked me, I believe he called me, phoned in, he was at depositions, if I remember, and he had asked me to call a Mr. Eno. I didn't know who Mr. Eno was, truthfully. And he gave me the telephone number and he said, "Call Mr. Eno and tell him that the information" -- something about the information that Mr. Eno wants is not available, and that it would be available, or something, in a few days. That conversation to me was something I repeated. I didn't know what information, et cetera.

I called you, and I told you that and you got angry, I remember. And you said something, "You mean in the information," or something,"is not in the office?" and I didn't even know what information you were referring to.

So I said, "No, I am just mouthing his words," and you said something, I remember, to the effect that, "Well, you better tell him that if he doesn't have the information I am going to call the judge."

And when I heard you say you are going to call the judge I says, "Oh, gosh, what is this?" you know. And I said, "But I don't know if I can reach him." Be-

cause I know you are not supposed to call someone at a deposition unless it is a matter of urgency, and I told you that, and you said, "Well, you better get him."

I think you said something about, "I'm giving you a certain amount of time."

I said, "Can't you make it a little longer than that? Suppose I can't get him for some reason," and you hung up.

And I remember calling -- I don't remember who I called at the time, but I remember calling the place where Mr. Bader was supposed to be, and the girl told me he was out to lunch, and I said, "Please have him call his secretary as soon as he walks in."

Q So that your recollection is that Mr. Bader spoke to you. What day did he speak to you and tell you to call me?

A I haven't got the slightest idea what date.

Q But it was the day you called me you say Mr. Bader spoke to you and asked you to call me, is that correct?

A Right.

Q That was in your office?

A He called me from the outside and I was in the office, right.

Q And he asked you to leave that message?

A He asked me to call a Mr. Eno, and gave me your phone number, and to give you that information.

Q What was the message?

A That Mr. Bader asked me to call and tell you -- I am his secretary; Mr. Bader asked me to call you and tell you that the information that you need is not available, he doesn't have it, it is not available, something to that effect, but that you could have it, I think he said, in about a few days, or something.

Q And that is what you told me personally when you called?

A I don't remember the exact words but it's the gist of it.

Q But then you called me?

A Pardon me?

Q You said then you called me?

A I called you and repeated that, right.

Q And you spoke to me and told me that, is that right?

A Yes, I did, right.

Q You are sure of that?

A I remember because you were angry.

Q But you are sure of the conversation as you

have described it?

A I mean not word for word, but the idea.

Q The substance?

A You wanted something I know. I didn't know what you wanted. Hadn't the slightest idea what it was. I didn't even know what the case was. You know, I was just merely repeating something he asked me to do for him.

Q Do you remember what time you spoke to Mr. Bader on the telephone?

A I would assume that you mean when he had called me or when I called --

Q When he called you from the outside.

A I would assume that it was early, before 12, of course.

Q About what time of the day?

A Oh, I don't recall the time exactly, but I remember your saying something, I think, about "noon," so it would have to be before that. I don't remember exactly what time.

Q You say he was on a deposition, wasn't he?

A I believe he was at depositions, right.

Q You didn't get in the office until somewhere around 10:30, is that right?

A Correct. Right.

Q So --

A I don't know. I wouldn't swear, but I am positive he had phoned that in to me. A hundred per cent sure it was a phone call.

Q And that you called me and gave me that information?

A Yes.

Q Do you see this gentleman sitting over there?

A Yes.

Q Did you ever see him before today?

A I don't remember.

MR. ENO: I have no further questions.

MR. BADER: No cross, your Honor.

THE COURT: Let me ask a question. Mr. Eno, what date do we independently fix the date of these two conversations as being?

MR. ENO: Which conversations?

THE COURT: The 9th?

MR. BADER: The 10th, your Honor.

MR. ENO: The ones with me?

THE COURT: The ones with you. The 10th?

MR. BADER: 9th and 10th.

MR. ENO: Just a minute, Mr. Bader. The

judge was speaking to me.

MR. BADER: I thought he was speaking to both of us.

MR. ENO: If you are referring to Mrs. Blacker's conversations with me the date I spoke to her, but not in substance that she has testified to, it is September 10th.

THE COURT: September 10th.

MR. BADER: Then I had a conversation with Mr. Eno's secretary on September 9th.

THE COURT: That is a Tuesday.

MR. BADER: September 10th is a Tuesday, sir. September 9th is a Monday, and I think we fixed those two dates by Mr. Eno's memorandum.

THE COURT: Mrs. Blacker, did you know at any time that Mr. Bader was going, was in, or had been in St. Louis?

THE WITNESS: I know he -- in the past he's been to St. Louis, but when --

BY MR. ENO:

Q This is in September now.

A I don't remember specifically. I know he has been going to St. Louis.

Q Let me ask you this. You say you don't

remember really one Thursday from another, but this September the 5th, where were you, if I may ask, on the Labor Day weekend?

A I spent that at home.

Q Do you remember the weekend?

A Not vividly.

Q You do remember the Labor Day weekend, the long weekend?

A Yes.

Q We are talking about Thursday after that weekend.

A Yes.

THE COURT: Does that help you to orient that particular Thursday? This is the very beginning of the fall.

THE WITNESS: It doesn't have any meaning to me, your Honor. The day, I mean.

THE COURT: But you cannot place it as being anything about the Labor Day weekend and then thinking about what happened later that week.

THE WITNESS: Not really, no.

THE COURT: You say you have a memory of Mr. Bader on some occasion going to St. Louis?

THE WITNESS: Yes, sir, right.

THE COURT: When did he go to St. Louis, in memory?

THE WITNESS: I know he's been there several times, but I don't recall just when.

THE COURT: Do you remember him going in early September after the Labor Day weekend?

THE WITNESS: I would not remember just when. I don't really remember just when he went.

THE COURT: But you do know he went?

THE WITNESS: Yes.

THE COURT: This is the day before he went. Does that help you to fix the 5th of September in your mind?

THE WITNESS: No, your Honor, it does not.

THE COURT: Your telephone call with Mr. Eno was on a Tuesday. Do you remember that day?

THE WITNESS: I would not know if it was a Tuesday. I mean I --

THE COURT: You remember the day of the phone call?

THE WITNESS: I don't remember the date of the phone call. I remember calling him. I don't remember the date I called him.

THE COURT: I am not asking that. You

remember that there was a day on which you and Mr. Eno had a phone conversation?

THE WITNESS: Yes, your Honor.

THE COURT: Which you remember because he became angry?

THE WITNESS: Got angry, right, right.

THE COURT: All right. This was the first day that you were at work after the 5th of September. So the day we are talking about being the 5th of September was the day immediately prior to -- the working day immediately prior to the day you spoke with Mr. Eno. Does that --

THE WITNESS: I say the days and the dates --

THE COURT: Think about it. I don't care about any days of the week or days of the month.

THE WITNESS: Right.

THE COURT: I am trying to make your mind focus on a day that you and Mr. Eno had a particular conversation, and this is the very prior business day. Think about it and see if you can remember that prior business day.

THE WITNESS: I do not, your Honor.

THE COURT: All right. Let me ask you

this. Exhibit A, I take it, is the answer to --

THE WITNESS: Touche Ross, is it?

THE COURT: -- further answer to the interrogatories of defendant Touche Ross & Company, is it?

THE WITNESS: Yes, your Honor, it is.

THE COURT: And it bears on the next-to-the-last page the typing, "Dated: September 5, 1974."

THE WITNESS: Yes.

THE COURT: You say you typed this?

THE WITNESS: Yes, that's my typing, right.

THE COURT: Do you customarily put upon a piece of paper that you type the date upon which you weren't typing it?

THE WITNESS: Very, very rarely. I wouldn't do a thing like that. I mean, no, no.

THE COURT: You type it --

THE WITNESS: You date it on the day you are typing it.

THE COURT: In other words --

THE WITNESS: Yes, your Honor.

THE COURT: -- you normally would put in

there the date you are typing it?

THE WITNESS: The date you are typing it, right, right.

THE COURT: Very good.

I assume if you were to depart from that practice it would be because somebody had given you instructions to date the instrument some other date?

THE WITNESS: That would be right, yes.

THE COURT: Do you have any recollection of being instructed to date Exhibit A some other date than the date upon which you typed it?

THE WITNESS: No, your Honor.

THE COURT: All right. Thank you very much.

(Witness excused.)

J A M E S K E L L E Y N E V L I N G, called as a witness by defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q Mr. Nevling, you are an associate in our office, is that correct?

A Right.

Q Were you in Mr. Bader's office to serve an

order to show cause on September 13, 1974?

A Yes, I was.

Q Did you speak to a lady sitting in the front office at the back desk? There were two desks in that front office and she was sitting in the rear desk?

A That's right.

Q Would you tell us what your conversation with that lady was?

A I came into the office and indicated that I wanted to serve an order to show cause on Mr. Bader. She said that Mr. Bader was not in the office at that time, and so I asked her a number of questions. I asked her what her name was, and she indicated that her name was Dorothy Blacker. I asked her whether anyone else in the firm of Bader & Bader was there, and she said that no, no one else was.

I asked her whether she was Mr. Bader's secretary, and she stated that she was not. And I asked her what her position was, and I believe at this point or at some point she asked me why I was asking all these questions and what I wanted, and so I explained that I had an order to show cause which had been signed by Judge Owen and that I wanted to serve it on Mr. Bader, and she declined to give me any information as to who she

worked for or what she was doing there, aside from indicating that she had nothing to do with Mr. Bader or the firm of Bader & Bader.

Q You saw the lady who just testified?

A Yes.

Q Who gave her name as Mrs. Blacker. Was this the lady who identified herself as Mrs. Blacker?

A No.

Q Will you describe the lady who identified herself to you as Mrs. Blacker, as best you can recall?

A Well, she was shorter than the woman who just testified, she had a different hair-do, and quite different appearance. I think she was a little older than the whoman who testified here today. She had different facial appearance.

Q She just was not the same woman at all?

A That's right.

MR. ENO: I'd like to ask Mr. Nevling some questions later on, your Honor, but I wonder if I could just suspend with him now and take these other ladies.

THE COURT: You may.

Mr. Nevling, no question she identified herself as Mrs. Blacker or Dorothy Blacker?

THE WITNESS: Yes, your Honor.

THE COURT: What did she say to you?

THE WITNESS: I asked her what her name was, and she said it was Dorothy Blacker.

THE COURT: Did you write that down or is this your memory?

A Yes, I had an envelope that the order to show cause was in, a regular Rosenman, Colin envelope, and I wrote that on the envelope. I don't have the envelope any longer because when I returned to the office I prepared an affidavit of service, and then I destroyed the envelope.

MR. ENO: It is mentioned in Mr. Nevling's affidavit of service on the order to show cause that he went into the office and he spoke to this lady who gave her name as Mrs. Blacker, and he went on as to what he had done in attempting to serve the order to show cause, because the order said it had to be served on the attorney personally.

THE COURT: Very good, thank you.

(Witness temporarily excused.)

ROSALIND ROSEN, called as a witness by defendant Touche Ross & Co., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q Mrs. Rosen, you are employed by our firm, are you not?

A Yes.

Q Did you on September 9th, at about 9:15 in the morning, receive a message from a gentleman who identified himself as Mr. Bader?

A I did, sir.

Q I show you this Exhibit H and ask you whether that is your handwritten memorandum with the message you received?

A Yes.

Q Is that the complete message that was given to you, as you recall?

A Verbatim.

Q And did Mr. Bader or the man who used the name Mr. Bader use the word "photocopies"? Is that his expression?

A Yes.

MR. ENO: I have no further questions, your

Honor.

MR. BADER: Just one question, your Honor.

THE COURT: By all means.

MR. BADER: It is getting late, your Honor, and I would like to get this thing over.

CROSS EXAMINATION

BY MR. BADER:

Q Are you sure, positive in your own mind, that I used the word "photocopies" and didn't say "copies"?

A I don't know where I could get the word "photocopies," which is down here.

Q I couldn't have said something different, I couldn't have said another word, perhaps, that sounded like photocopy?

A No, sir.

Q You are absolutely positive about that?

A Positive.

MR. BADER: I have no further questions, your Honor.

THE COURT: Very good.

(Witness excused.)

M U R I E L K R E S H, called as a witness by defendant Touche Ross & Co., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EHO:

Q Mrs. Kresh, are you employed in our office as my secretary?

A I am.

Q Did you at about 9:25 in the morning of September 10th receive a message from a man who identified himself as Mr. Bader?

A I did.

Q Is it correct that I was not in the office at that time?

A You were not.

Q Is this Exhibit J that I show you the message that you received from that gentleman?

A This is what I received.

Q Is that the complete message that you received?

A To the best of my knowledge, that's it.

Q Did the gentleman who gave you that message use the word "photocopies"?

A Yes, he did.

MR. ENO: I have no further questions.

MR. BADER: I will ask you the same question that I asked your colleague.

CROSS EXAMINATION

BY MR. BADER:

Q Are you sure I used the word "photocopy," you are absolutely positive of that.

A I could be positive because it wouldn't be an expression that I would use myself.

Q Could it have been photographic copies?

A Photocopies.

Q Could it have been verbatim copies? You are sure it was photocopies?

A There would be no reason for me to write anything other than what I --

Q As long as you are positive I don't want to take the time of the court any further.

THE COURT: Thank you. You may step down.

(Witness excused.)

MR. ENO: Now I would like to ask Mr. Bader some further questions.

MR. BADER: Certainly.

I. W A L T O N B A D E R resumed and, having been previously duly sworn, testified as follows:

THE WITNESS: This, as your Honor can understand, has been quite distressing to me. This is the first time in my 25 years' experience that I have been accused of something that smacks of improper practices, and you can understand how this really worries me.

CROSS EXAMINATION

BY MR. ENO:

Q Mr. Bader, I'd first like to get clear where you live. Do you have more than one residence?

A Yes. I am a legal resident of the the State of Connecticut. I live in Brookfield Center, and I vote from Brookfield Center. However, because of the fact that I am working in New York City, I occupy an apartment at 40 Morrow Avenue in Scarsdale, New York, but that is not my legal residence.

Q What is your residence in Brookfield, Connecticut? What is your address?

A Beech Tree Road.

Q Do you have a residence also in Brooklyn?

A That is my father's house.

Q But you are listed in the phone book?

A That's correct, and I can tell you exactly why. I lived in Brooklyn, I lived in Brooklyn for about two and a half years previous to today, until I moved to Scarsdale and Brookfield Center, and because of that I still keep my listing in Brooklyn. My father, who is a member of the firm, is a man who unfortunately is blind, practically blind, and in addition to which he is practically crippled, he can't get around. Well, now, I like to keep him as a member of the firm, and as a matter of fact we have telephone switchovers and all kinds of gadgets in the office so that if somebody calls him he can be called in Brooklyn. As a matter of fact, I think one of your nice gentlemen, possibly Mr. Nevling, actually served papers on him in Brooklyn at one time.

THE COURT: All right, go ahead.

Q You heard Mrs. Blacker's testimony, or the lady who identified herself as Mrs. Blacker, and she testified that you have an associate named Mr. Scher, is that right?

A That's correct. Mr. Scher is one of my associates.

Q Is he affiliated with your firm or does he

just share space with you?

A No, sir. Well, it's a very -- it's a very peculiar arrangement, if you'd like me to expatiate on it.

Q Not really any expatiation. If you can just briefly tell us what your relationship is with Mr. Scher?

A Mr. Scher is the senior partner of a patent firm by the name of Richards & Geier, and I am an ostensible partner of that firm, the partnership consisting of being a partner on such matters as he calls upon me to work on.

Q And you do work for Mr. Scher?

A I haven't done anything for Mr. Scher in the last year and a half, but I have done something before. And as a matter of fact I have just finished a case for him before Judge Knapp last Friday.

Q So that you do call upon each other to do things for one another occasionally; is that correct?

A He calls on me. I don't call on him.

Q You don't call on him for anything?

A No, sir.

Q Did you ever ask him to look at your mail?

A No, sir.

Q Do you a favor?

A No, sir. As a matter of fact, I had a terrible amount of trouble with his secretaries. He really picks winners. And the last secretary that we had -- that he had -- is a woman who in my opinion was crazy.

THE COURT: All right. We don't need to get into that.

A Okay. But I just wanted to tell you that I have a tremendous problem not only with the other secretary but with this secretary. I can't get her to give me the right time.

THE COURT: All right, go ahead.

Q You testified that when you left your office on September 5th you went tothe New York Law Institute, is that correct?

A Yes, sir.

Q And you stayed there until 7 o'clock, is that right?

A Yes, sir.

Q Where did you go then?

A I went to Newark Airport.

Q And what were you going to Newark Airport for?

A Get on an airplane to St. Louis.

Q Which plane?

A There is a flight going to Indianapolis. It's an Alleghany Airlines flight. I don't know the flight number. It leaves at 8:05 from Newark. You go to Indianapolis, and from there you switch on to a connection for St. Louis. The only reason I took that flight and that crazy schedule was that I was at the New York Law Institute, and from there I could get onto the Hudson Tubes and get over to Newark, which is much easier traveling than trying to get to either LaGuardia or Kennedy.

Q What happened when you got there?

A I got there too late.

Q You missed the plane?

A Yes, sir.

Q What did you do then?

A Went back to New York.

Q Where to?

A Well, first thing I did, I took the express bus that they have at Newark Airport. That took me over to the Port Authority Terminal over at 40th Street and Eighth Avenue. I then got off that bus, went onto the crosstown bus and went to Grand Central, and at Grand Central I went up to, I believe it was, Bronx-

ville. I am not sure now, don't hold me to it. There are three stations I use. And I called my wife before I left and I told her to pick me up, that I was coming home, that I missed the plane to St. Louis.

Q You remember all of that very distinctly?

A That I happen to remember. It just so happens the reason I remember it is because I missed the plane.

Q And you stayed over. So you never did go to St. Louis on September 5th, is that right?

A No, I didn't go to St. Louis until September 6th at 7 o'clock in the morning.

Q Where did you take that plane from?

A From Newark Airport.

Q How did you get from Scarsdale to Newark Airport at 7 o'clock?

A With my automobile.

Q Your car?

A Yes, sir.

Q You left it in Newark?

A Left it in the Newark parking lot.

Q And you stayed in St. Louis on September 6th and September 7th?

A Yes, sir.

Parenthetically, your Honor, I forgot to bring to this hearing, because I have been a little bit nervous, the registration records of the hotel in St. Louis and the hotel in Washington, and I wonder if I could have your Honor's permission to put that in. I will send Mr. Eno copies of them.

THE COURT: Mr. Eno, any objection?

MR. ENO: No objection.

Q What hotel did you stay at in St. Louis?

A The Mayfair Hotel, sir.

Q And you returned on September 7th, is that correct?

A Very late, yes.

Q What time did you leave St. Louis?

A I believe I left St. Louis somewhere around 6 o'clock and got into New York at about 10.

Q Where did you get to in New York?

A Newark Airport, sir.

Q Where did you go when you arrived in New York?

A I believe I went to Scarsdale and went to bed.

Q Do you remember what time you got home that night?

A Well, Mr. Eno, I am trying to be accurate. I really -- it was late. It was late.

Q Does your wife reside with you at this Scarsdale address?

A Oh, yes. Yes, sir.

Q What did you do on September 8th?

A Went to Brookfield Center.

Q What time did you go there?

A I really don't remember, Mr. Eno, but I know we did go there during the day some time.

Q Do you remember what time you went?

A I don't remember the time, no, sir.

Q How much time did you spend in Brookfield Center?

A Most of the day, I think.

Q Who did you see there?

A Saw Mr. Sands.

Q Who else?

A My mother-in-law.

Q Who else?

A I think that's all.

Q Is it your mother-in-law who has the house in Brookfield Center?

A Yes, sir.

Q She owns the house?

A Yes, sir.

Q What was the occasion for your seeing Mr. Sands on September 8th?

A Mr. Sands? I wanted -- I believe that I wanted to ask him whether he was going to New York on September 9th; he could go and check my mail.

Q Did you see him personally?

A On the 8th? Yes, sir.

Q When did you make the arrangements to see him?

A Gosh, I don't remember. Either personally or by phone, I don't know just how it was done.

Q How much time did you spend with him?

A Hour, hour and a half, maybe.

Q And he said he would come to New York to look at your mail, is that correct?

A Yes, sir.

Q And he had to get there very early, didn't he, from Brookfield Center?

A Yes, sir.

Q What time did you tell him to be in your office?

A Told him to get there as close to 9 as he

could, preferably earlier. Our mail comes in about 8, Mr. Eno.

Q You say you went to the Law Institute to work on the Penzzoil matter, is that right?

A Yes, sir.

Q What is that matter?

A That is a case involving convertible debentures of Pennzoil Company that I have with Mr. Shostak in St. Louis.

Q Whom do you represent in that matter?

A Mr. Steinberg, a debentureholder, sir.

Q And who is Mr. Shostak?

A Mr. Shostak is an attorney in St. Louis whom I am associated with in various matters.

Q What was involved in the Pennsoil matter in St. Louis which compelled you to go there on September 6th?

A That was only one of the matters that I went to St. Louis about, sir.

Q I see.

A That was only one of the problems. We discussed many other problems. The primary problem was not the Pennzoil matter.

Q It was not the Pennzoil matter?

A No, sir.

Q What was the primary problem?

A The primary problem involved a case known as, I believe, Diversified Packaging, involving a trademark problem in Florida.

Q What was the occasion for you to go to St. Louis on September 6th in connection with that?

A Had to write an appeal brief in the Fifth Circuit.

Q When was that to be filed?

A A few days later.

Q And you had to write it out in St.Louis, is that correct?

A I had to work with Mr. Shostak in St. Louis on the brief, yes, sir.

Q Did you meet with anybody else in St. Louis?

A Mr. Oherrin.

Q Who is Mr. Oherrin?

A He is an associate of Mr. Shostak who is also working on these matters.

Q Is he in the same firm as Mr. Shostak?

A No, sir. He comes from a small town known as Maoden, Missouri. Just a moment -- if your Honor

will indulge me for just one moment --

Q I will accept Malden, Missouri.

THE COURT: Go ahead.

Q Was he working on the brief with you?

A Yes, sir.

Q That is what you spent your time in St. Louis doing, writing this brief for the Fifth Circuit?

A Yes, sir, and law research.

Q Pardon me?

A And law research.

Q What were the necessities of the Pennzoil matter that compelled you to go to the Law Institute on September 5th and stay there until the time that caused you to miss your plane flight to St. Louis?

A Sir, there is a very serious problem in that case.

Q I am not asking you whether the problem was serious. I was asking you what was involved in the case that made it urgent for you to go to the Law Institute on September 5th to do that work.

A Well, there were motions filed in that case to dismiss on the ground that we did not comply with the provisions of the indenture under which the debentures were involved, and the provisions of this indenture

under which the debentures were involved, and the provisions of this indenture required certain things to be done involved what's called a no-action clause.

Now, there are split decisions as to whether or not such a no-action clause is valid or invalid. We were subject to a motion which was coming up only about a few days later, and since Mr. Shostak and Mr. Oherrin did not have the expertise, they insisted that I give them a thorough memorandum, and this was the only time I had to work on it.

Q When did you say those motions were returnable?

A A few days later. I don't know just when. They weren't returnable when I went to St. Louis, they were returnable about a week or so after that. The motions were subsequently adjourned and subsequently they were argued and I believe subsequently I did go to St. Louis again and argue them.

Q You argued the motions?

A I believe I did, sir.

Q Are you sure you did?

A Well, I know that I appeared before Judge Wanglin in St. Louis.

Q I am just asking you a simple question. Did you argue the motions?

A Well, we argued -- I think we argued two and then we consented to one and then we did all kinds of things.

Q Did you do the arguing?

A Yes, sir.

THE COURT: Mr. Eno, I hage to cut you off but Mrs.Owen and I have a dinner engagement and we are going to the Philharmonic Hall. And I envisaged testimony of one lady and I have gotten three ladies and a gentlemen and another gentleman.

MR. ENO: Can we have another hour with your Honor?

THE COURT: I was going to say I think I am going to have to carry you. Is tomorrow evening acceptable?

MR. ENO: Tomorrow is fine with me.

MR. BADER: The only problem, your Honor, I just wonder if we -- what is Mr. Eno trying to drive at?

THE COURT: I will await his briefing me on that score, but --

MR. ENO: Tomorrow would be fine, your Honor.

THE COURT: All right.

MR. BADER: What time, sir?

THE COURT: I could commence at 4:15 tomorrow, if that is agreeable to you.

MR. BADER: 4:15 is fine.

MR. ENO: Very good.

(Adjourned to Thursday, November 14, 1974, at 4:15 p.m.)

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.

vs.

TELEPROMPTER CORP., et al.

New York, November 14, 1974,
4:15 p.m.

Hearing resumed.

- -

I. W A L T O N B A D E R resumed.

MR. ENO: If your Honor please, Mr. Bader has produced these hotel records.

THE COURT: Very good. Shall we mark them.

MR. ENO: I think we ought to mark those exhibits and I will just ask him.

CROSS EXAMINATION CONTINUED

BY MR. ENO:

Q Mr. Bader, you have produced these American Express tickets showing your presence in St. Louis on September 7th and your presence in Washington or Arlington, Virginia on September 10th.

A Well, I think what you will find on that is that --

THE COURT: Why don't you offer them in evidence and I will receive them and look at them.

THE WITNESS: I just wanted to make an explanation with respect to Mr. Eno's statement. These bills were paid to the 7th, but it refers to a stay in St. Louis for the 6th. In other words, this is the hotel record you come in on the 6th and of course you pay the next day. And the same with Washington: this is the 10th, which is the day after I left, and of course I went to the hotel on the 9th.

THE COURT: Very good. Let's mark that as an exhibit -- what is the next number?

MR. ENO: The next number -- I think we might as well mark it as Mr. Bader's exhibit.

THE COURT: Exhibit A.

MR. ENO: Plaintiffs' B.

(Plaintiffs' Exhibit 3 was received in evidence.).

xx THE WITNESS: Were there exhibits I introduced prior to this?

MR. ENO: Yes, you introduced some post office --

THE WITNESS: Yes, yes, you are absolutely right. You are absolutely correct.

MR. ENO: On that score, on these preceding exhibits that have been marked for identification I would like to offer them in evidence. They have all been testified to and --

THE WITNESS: No objection, your Honor.

THE COURT: Very good. They will be received.

BY MR. ENO:

Q Mr. Bader, is Mr. Sands related to you or your family?

A Well, I am married to his dister. If thar makes me a relation, I suppose I am, but I knew him before I was married to his sister. As a matter of fact, he was the one who introduced me to his sister.

Q Who is Richard Gordon?

A Richard Gordon is the president of the Independent Investor Protective League, sir.

Q Where does he live?

A He lives in Freeport, New York.

Q Does he have an office in New York City?

A 19 West 24th Street.

Q What is his business?

A He has many businesses. At the present time I believe he is in the pet supply business, in addition

to being president of the league.

Q He executed the first answers of the Independent Investor Protective League to the interrogatories that were addressed by Touche Ross, did he not?

A Yes, sir.

Q Was there any reason why you didn't have him execute the second set of answers but had Mr. Sands come all the way down from Brookfield Center, Connecticut to execute them?

A No.

Q There is no reason?

A Just required an officer and I felt that Mr.Gordon had executed one set. I felt there was no reason why I couldn't have Mr. Sands execute the second set.

Q I show you Exhibit A, and whose handwriting is that in the conformance? Is that your handwriting conforming that original, that copy to the original?

A Doesn't look like my handwriting.

Q Do you know whose it is?

A Sorry, I don't.

Q And it has a "/s" in front of it indicating it is the signature of someone other than Mr. Sands, is

that correct?

A No. You mean that "s"?

Q Yes.

A That would indicate signed, I would assume. I don't know who did that. In other words, that is not my handwriting, I can tell you that.

Q That is the total extent of the conformation of that copy to the original, isn't it?

A Well, there is also a date on the top of September 5, 1974.

Q That is typed in?

A That's correct.

Q But I am talking about the conformation of the copy with the original to the extent that there is no typing.

A Yes. As a matter of fact, I was the notary in this case.

Q But you put no notary stamp on the copy?

A Well, apparently I didn't. I should have and I didn't.

Q And you didn't indicate filling in any of the other blanks, did you?

A Apparently I didn't, but I can tell you that on September 5th I took Mr. Sands' signature, and I can also

tell you on September 5th that I executed a certificate of service.

Q But the copy that you had mailed out was unconformed except for writing in Mr. Sands name at the bottom of it?

A Apparently that's correct.

Q Do you recall whether on September 9th you called me or called my office once or more than once? Do you recall?

A I recall only once, Mr. Eno, but I wouldn't want to swear to that. I know I made a call early in the morning from the Ambassador Club at LaGuardia Airport.

Q You went to Washington on September 9th on the United Gas Pipeline matter?

A Yes, sir.

Q Whom do you represent in that matter?

A Philip S. Steinberg and his wife -- I forget his wife's name offhand -- as representative of a class of debentureholders of Pennzoil Company, and we have also intervened, as well as the Independent Investor Protective League, in Federal Power Commission proceedings involving Pennzoil.

Q Your appointment there, you said, was 1:30

in the afternoon?

A Somewhere in that neighborhood,yes, sir.

Q Do you remember with whom you had your appointment?

A Sir, there were about 20 attorneys there.

Q Do you know the names of any of them?

A Well, I think there was an assistant attorney general from the State of Louisiana.

Q Do you know his name?

A I don't know his name. If it really became material, I think it would be easy enough to verify the 20 attorneys who were there. As a matter of fact, I made a statement at that meeting. It was a big conference room that we had. There were lots and lots of people there.

Q Can you give me the names of any one of them?

A Well, Mr. Edward Oherrin was there, who was my co-counsel in the matter.

Q Anyone else that you can name?

A Let me see. I know there was a gentleman from Baker & Botts. I am trying to -- of Houston, Texas -- I am trying to think of his name; and a remember an assistant attorney general from the State of Louisaiana. As I say, there were almost 30 people there. I am sure

if it really was material I could get you the list.

Q Do you know where you had your appointment that day?

A I believe it was at the offices of United Gas Pipeline Company in Washington. I don't recall the address at the present time, but I know that it was somewhere in downtown Washington. I know we went from the upper floor, where there was a small conference room, to the lower floor, where there was a big conference room.

Q You said that the fact that you had to be in Washington on the United Gas Pipeline matter came as a surprise to you, as unexpected, is that right?

A Yes, sir, completely unexpected, sir.

Q When did you learn that you had to be in Washington on September 9th?

A At 1 o'clock on September 6th when I was in St. Louis.

Q From whom did you learn that?

A I was in Mr. Shostak's office, sir, at 818 Olive Street in St. Louis. I received a telephone call, or Mr. Shostak received a telephone call from somebody, I believe, from Baker & Botts in Houston, Texas, stating that there was going to be a settlement hearing

on Monday.

Now, the problem was that I had another engagement in New York on Monday at the offices of White & Case in connection with depositions, and I know that I made a number of calls from St. Louis at that time to get those depositions moved to Tuesday.

Now, here again I can't swear to the order, your Honor. I know that I telephoned -- I know that I telephoned Norman Nelson at Milbank, Tweed, and I asked him if he could arrange with everybody else whether or not we could adjourn those depositions on Monday because I had something to do in Washington, and Mr. Nelson said that he just wasn't going to do that as far as he was concerned, he'd agree to an adjournment but he wasn't going to speak for anybody else.

I may have put a call in to White & Case and tried to find Nora Banfield, who was the partner in charge at that time, and I believe she was out, and then I went ahead and I called a man by the name of Williamson. His name is -- let me see if I get his name. The firm is Williamson & Schoenman, your Honor, in -- at 60 East 42nd Street, and Williamson -- and Williamson was gracious enough to call the other attorneys

and to arrange the adjournment for me. I don't recall now whether there was a second call made or whether Williamson called me back or whether I asked him to call me collect, but in any way there were a lot of calls made from St. Louis to New York during that time and they were made from Mr. Shostak's office. I may have charged them to my credit card. I am not quite sure how they came about but I know the calls were made.

Q You came back from Washington on the 7:00 a.m. shuttle, you said?

A Yes, sir.

Q September 10th?

A Yes, sir.

Q And that was into La Guardia?

A Yes, sir.

Q What time did you arrive at La Guardia?

A Well, it would be somewhere around eightish, I I would assume.

Q What did you do then?

A Got on the bus to go to New York. I had my car parked at La Guardia but I didn't want to take that because in the morning there is a special bus lane that goes across the bridge, that buses can take but the cars can't use it. It's actually the tunnel. There is a

bridge that comes before the Midtown Tunnel, your Hn Honor, maybe you are familiar with that. There's a three-lane road and what they do in the morning, they take one lane of the outbound and they make that exclusive for buses, but if you take a car, you get hung up and you will be there for an hour, and I had to get in, I was very late., so I took the bus, the LaGuardia Airport bus, got off at Grand Central, ducked into the subway, and came down to the office of White & Case.

Q At what time did you arrive in the offices of White & Case?

A Somewhere I would assume around nineish or so, 9, 9:30, somewhere in that neighborhood.

Q Where are their offices?

A I believe it's 14 Wall Street, sir. Again, I don't want to swear to the address.

Q You called me on September 10th, is that correct?

A Yes, sir.

Q Where did you call me from?

A From their offices, sir. I didn't get you either. I put a call to your office.

Q And it took you from 8 -- from LaGuardia, at 8 in the morning, to about 9:30 to get down from

LaGuardia to the offices of White & Case?

A Well, I wouldn't --

Q Just answer. Would you answer that question yes or no.

A Mr. Eno, I don't want to be in a position of letting you nit-pick on time. I don't know. I know that I took the 7 o'clock air shuttle. I know that I got to the bus as soon as the plane landed in New York. I know there were a certain number of minutes of connection time before the bus pulled out. I know that I then got to the airline terminal right across from Grand Central. I know that then I got off the bus, went down into the subway and went down to the offices of White & Case, and it is possible -- now again you understand, your Honor, that it's a little bit hard to remember exactly what happened any particular day. I have a funny feeling that I went upstairs to where the airline ticket offices are, put a call in to Miss Banfield because we had a 9 o'clock date, that was the agreement, as a consideration for the adjournment from Monday to Tuesday. And I think I called her and said, "I'm awfully sorry, I got in late, but I will be down just as soon as I can."

Q What time was your appointment at White &

Case?

A Nine o'clock, I believe, sir. Now, again I would assume that if it really were material, that the people -- there were plenty of lawyers there who know the time that I got there.

THE COURT: Go ahead.

Q You heard Mrs. Blacker testify yesterday?

A I certainly did.

Q She testified that when she prepared the copies of the answers to interrogatories of Messrs. Randolph, Fagan and Michael that she put the copies in the file.

A That's correct.

Q She also put in the file envelopes addressed to the attorneys, and that the copies that she put in the file were not in the envelopes?

A That's correct.

Q Can you tell us how the copies got into the envelopes?

A I put the copies in an open envelope at the time that I met with Mr. Sands, and, as a matter of fact, I told Mr. Sands that unfortunately I couldn't send these out because I didn't have the interrogatory answers back from the people and that this thing had concerned me because of the fact that we had had -- that this was the last day for sending these out. I left that

envelope and I told him the only problem I would have would be with your firm. The other firms I got along with fine.

Q What induced you to put the copies in the envelopes?

A Just to show him what had to get out. That's all.

Q Just to show him what had to get out?

A That's correct.

Q But you didn't tell him, "Send them out"?

A Of course not.

Q Now, you wrote in your letter to the court that you had -- and I will quote the letter to the court of September 11th, which is Exhibit B -- "I don't think I prepared before I left copies of answers to interrogatories which I intended to mail and to conform as soon as I returned from St. Louis, Missouri," is that correct?

A That's correct, sir.

Q So although you intended to conform these copies to the originals, nevertheless you put the copies in the envelopes, is that correct?

A Just in an open envelope sir. I would have removed those from the envelope to conform them.

Q You also testified there was a girl in the front office of your office who sits in the front office?

A There's a girl there, Scher's secretary, yes, sir.

Q What's her name, do you know?

A I don't know.

Q Do you know the name of Mr. Scher's secretary or bookkeeper?

A Her name is Barbara. I don't know her last name. Unfortunately, I have had a lot of trouble with Mr. Scher's staff and this is one of the reasons why he and I are parting company in approximately a month. I get no cooperation from his staff whatsoever.

THE COURT: Mr. Bader, just stick with the questions.

THE WITNESS: All right, sir. I am sorry.

THE COURT: Very good.

Q When you spoke to Mr. Sands on the morning of September 9 -- do you remember that?

A Yes, sir.

Q -- where were you when you spoke to Mr. Sands?

A At the Ambassador Club, LaGuardia Airport, sir, Trans World Airlines.

Q Did he tell you how many letters had arrived

from our firm?

A I don't recall.

Q Did he tell you there were other letters there for you?

A He read off the return addresses of a number of letters, yes, sir. I don't recall which ones now. I know he told me there were some papers from attorneys, there was something from a firm in Los Angeles I think, O'Mulvaney & Meyers, or something like that, but I could be wrong on that too.

Q On September 10, 1974 I had hand-delivered to your office a letter of which I will show you a copy and ask you whether you saw the original of that letter when you came to your office that evening?

A I certainly did.

MR. ENO: May I have that marked, please.

Q Mr. Bader, as I understand it, in the reception room of your office there were two desks, is that right, one behind the other?

A Yes, one is actually mine, the other one belongs to Scher's secretary.

Q The one in the front is yours?

A Yes, sir.

Q Nobody sits at that desk?

A No, sir.

Q You also testified that you expected to receive back from the individual plaintiffs two answers from Connecticut, is that correct?

A No, sir.

Q Isn't that what you said?

A Wait a minute, wait a minute. Not from -- no, not from Connecticut. I believe one from Vermont and one from Connecticut.

Q Your testimony was you expected two from Connecticut. Your testimony now is that one was from Vermont and one was from Connecticut.

A Let me tell you this. Gary Michael, who was one of the individuals involved, is a law student. He is a resident of Connecticut but I believe he goes to school in Vermont. So, as a matter of fact, I think in one of your letters you questioned the fact that there was some venue problems with the affidavit of Michael that had been subsequent sent in to the court. Do I know that I expected one from Mr. Fagan from Connecticut, and where Mr. Michael's was coming from at this point, I am not sure whether it was Vermont or Connecticut. In any event, Mr. Fagan's answer, as you know, never arrived. Still hasn't arrived to this day.

Q As I understand your testimony, Mr. Bader, after you talked with Mr. Sands about 4 p.m. on September 5th --

A It was later than that but go ahead.

Q How much later?

A Well, Mr. Sands says 4:15. I wouldn't want to swear to 4:15. I know it was after 4. I think it was probably some time about 5, but --

Q You don't know how much after 4 it was?

A Well, I think at one point I said 4:15 because I adopted Mr. Sands idea of that. I am not precisely sure of the time. I know it was somewhere between 4 and 5. I wouldn't want to put it closer than that.

Q After that conversation you were under the impression that the answers had come in from all of the individual plaintiffs, weren't you?

A Yes, sir.

Q You didn't find out the contrary of that until you got to your office in the evening of September 10th, is that correct?

A That's correct, sir.

Q In your letter of September 11th to the court, which is Exhibit B, you told the court in that letter that when you called my office on September 9th

the following ensued, and I will quote:

"I was told about the receipt of the letter" -- that 's my letter -- "of September 6th on September 9, 1974 but not the contents" --

A That's correct,sir.

Q Just let me finish please.

-- "and believing that Mr. Eno was referring to the answers of Randolph, Fagan and Michael, I told his office that I told his office that I hoped to received the signed cpies of those interrogatories and would be mailing them in a few days. I again told his office on September 10, 1974 that I hoped to receive the signed copies of the original documents in a few days."

A But that was September 11th, Mr. Eno. By that time --

Q Just a moment, please.

In this letter of September 9th you were talking about the messages you had left in my office on September 9th and on the morning of September 10th.

A I don't think that that's quite correct.

Q I will let you look at the letter and see whether it is that that you were saying to the court.

THE COURT: This is the letter of the 11th?

MR. ENO: Yes, your Honor, on the second

page.

page.

A Yes. Well, that's correct. Now you refresh my recollection, Mr. Eno. I really didn't know what we were talking about before. Now I understand what you are talking about.

Q So that while you were still under the impression that the original answers had already come into your office from the individual plaintiffs, you told the court that you had left messages in my office that you expected to receive the original answers in a few days' time, is that correct?

A No. Let me put it this way. I had never -- at the time -- at the time of your telephone call, in other words, the telephone calls of September 9th and September 10th, at that time I had believed the situation was as follows: The original interrogatories had come to my office but had not been sent out to you. In other words, the only ones that I knew that had gone out were the ones of Independent Investor Protective League, and therefore I could not certify at that particular time that the answers had actually been received because of the fact that I just didn't know.

Q But you were certifying in the letter, you

were telling the court in the letter, that you were telling my office they hadn't yet been received, they were coming in in a few days.

A I don't think that that's what that means at all. It certainly was not my impression to say that.

MR. ENO: I see. I have no further questions of Mr. Bader.

THE COURT: Let me be sure I understand this.

Mr. Bader, this letter of September 11th, addressed to me, whatever exhibit number it happens to contain -- I have the original here --

THE WITNESS: Yes, sir.

THE COURT: -- this bears the initials "CF as the typist, which I believe you said are your initials that you put down when you type something else.

THE WITNESS: Yes,sir.

THE COURT: You typed this letter yourself?

THE WITNESS: Yes, sir.

THE COURT: Do you have that letter in front of you?

(Exhibit handed to witness.)

THE WITNESS: Yes,sir.

THE COURT: Do you acknowledge -- look at page 2, the third full paragraph, beginning "On September 6."

THE WITNESS: Yes, sir.

THE COURT: Is the fact that you told Mr. Enos office on the 9th that you hoped to receive the signed copies of the Randolph, Fagan and Michael interrogatories and would be mailing them in a few days?

A No, sir. Well, I told him that -- the reason being -- I think the language is possibly unfortunate. I had written that in a hurry on the evening of September 11th, and you can understand that I was terribly upset at this particular point, that something like this had happened. I didn't know how it happened. What I had told Mr. Eno at the time was that since I hadn't been in my office I could not vouch for those answers actually being there until I actually got back to my office, and when I got back to my office I would pick those up, physically see them, and I would be glad to send him copies. That is what I meant when I said that, your Honor.

THE COURT: You said you hoped to receive the

signed copies of those interrogatories. Your awareness, as you say, was that you did not know whether you had received them or not.

THE WITNESS: I could not certify at this particular point because I wasn't in my office. All I had is a telephone call from Mr. Sands. Now, at that particular point how could I certify to Mr. Eno that those things were there when at that point I hadn't seen them?

THE COURT: The next line is the fact that you again told his office on September that you hoped to receive the signed copies of the original documents in a few days.

THE WITNESS: Well, what I meant to say, your Honor, I don't think --

THE COURT: Did you tell his office that?

THE WITNESS: In those precise words, no, sir.

THE COURT: In substance?

THE WITNESS: In substance, yes, because I hadn't been in my office. I hadn't seen them yet and how could I certify --

THE COURT: Where did you type this letter of September 11th.

THE WITNESS: Well, but this refers to the conversation -- I was in my office. My September 11th I knew what was happening. In other words, by the time the letter of the 11th was done, your Honor, at this point I knew what the facts were.

THE COURT: You hadn't been to your office?

THE WITNESS: I hadn't been to my office until the 11th, sir, until the evening of the 11th -- evening of the 10th; I'm sorry.

THE COURT: I seem to remember --

MR. ENO: May I ask a few other questions, your Honor, and I think it might become a bit clearer.

BY MR. ENO:

Q You didn't speak to me on the 9th, did you?

A No, sir.

Q And you didn't speak to me in your first call to my office on the 10th, did you?

A No, sir.

Q You also spoke to me on the 10th, and you have already testified to this. When you did speak to me later in the morning on the 10th before you had gotten back to your office, didn't you say to me, and you testified with respect to this, "I have the originals and you can take my word for it"?

A I don't believe I said that, sir.

Q You don't?

A No, sir. I believe I said that I was informed that I had the originals and that I'd be glad to exhibit them toyou as soon as I got to my office.

MR. ENO: I see. We will let the record speak and I am going to make my statement for the record as well, but in any event, your Honor:

Q After Mr. Nevling had been to your office --

A Are you talking to me, sir?

Q Yes, after Mr. Nevling had been to your office on September 11th did you receive a copy of a letter that I addressed to the court that day?

A I certainly did.

Q Is this a copy of the letter that I sent to the court?

A I couldn't swear to it but I would assume it's probably right.

MR. ENO: May I have that marked, your Honor.

(Defendant's Exhibit O was received in evidence.)

THE COURT: Mr. Bader, if I can go back again to that letter of September 11th, to focus your attention,

Mr. Sands gave testimony here that on the afternoon of the 5th you called him on your 61 line.

THE WITNESS: Yes, sir.

THE COURT: And he said to you, "You don't have to worry, the Teleprompter answers are here"?

THE WITNESS: Yes, sir.

THE COURT: Did he say that to you?

THE WITNESS: Yes, sir.

THE COURT: What did you understand that to mean?

THE WITNESS: That all of the interrogatory answers, Michael, Randolph and Fagan, had gotten into the office on September 5th and that under the circumstances I could send them on Monday when I returned -- or, actually, I thought I'd return to the office on Saturday -- that I would send those things out, and if I were a day late and there were some problems with respect to that I could make a motion with the court and as long as the interrogatory answers actually came in on the 5th, I would assume that I could get my extension of time without any trouble.

THE COURT: On the letter that you wrote on the 11th you relate a conversation which you stand behind with Mr. Eno, in which you say that you told him

on both the 9th and the 10th that you hoped to receive the signed copies, being the originals, in a few days.

THE WITNESS: Well, because --

THE COURT: You had been informed by Mr. Sands on the 5th, however, that they were there?

THE WITNESS: That's correct, sir, but I am not going to take Mr. Sands' word for anything until -- if I am going to certify to Mr. Eno that certain things are in the office, I have got to be physically there to make sure that they are received, so that --

THE COURT: Did it occur to you to say to Mr. Eno that "Mr. Sands tells me that the originals are there, and I will go check and you can come look at them"?

THE WITNESS: That's what I should have done, sir. In retrospect, there is no question about that, that that is what I should have done.

THE COURT: You did not do that?

THE WITNESS: I did not do that, sir.

THE COURT: You did not say in any way that "I understand they are on my desk"?

THE WITNESS: I think I said something to that effect to Mr. Eno, I don't know -- I am a little

bit confused about the precise conversation. Mr. Eno seems to indicate that I said to him, "The interrogatories are in, you can take my word for it," and that the conversation I relate in your letter is not the correct transcript of the conversation that we had.

THE COURT: I see, all right.

MR. ENO: Your Honor, if I may just say that we have the testimony of Mrs. Rosen and Mrs. Krosh who took the messages of September 9th and September 10th, and there is in evidence the messages as they received them.

THE COURT: All right.

MR. ENO: And I ask Mr. Bader if after we received his of September 11th, which arrived in our office on September 13th, he then received a copy of another letter that I addressed to Judge Owen.

THE WITNESS: I presume I did get -- I presume I did get this letter. I believe I did get that letter, yes, sir.

THE COURT: Which letter is this?

THE WITNESS: That is the letter of September 13th.

MR. ENO: The 13th.

THE WITNESS: I don't know if I answered it

because at that point we had motions pending.

MR. ENO: May that be marked.

(Defendant's Exhibit P was received in evidence.)

THE COURT: Let me just ask you with regard to that letter, do you have the September 13th letter?

THE WITNESS: The September 13th letter, yes, sir.

THE COURT: In there Mr. Eno is writing that in a conversation with you on the 10th you assured him that you had the original signed answers of all the plaintiffs and said: "You can take my word for it."

Is that your recollection of that conversation?

THE WITNESS: No, sir, but there was -- now, the recollection --

THE COURT: What is your recollection of that conversation.

THE WITNESS: Well, the recollection of the conversation, I believe, was that I said to Mr. Eno that I hadn't been in my office, but that I had been given information to the effect that the interrogatories were there, and that I hoped to physically receive those things as soon as I got down to my office in a couple of days, or

something of that sort.

I mean I don't precisely remember what the substance of the conversation was but I can tell you this, that at the time of this conversation I had not been in my office from the time of the 5th -- from the time that those interrogatories of Randolph were received on the 5th and seen by Mr. Sands until I received and came to my office on the evening of the 10th.

So I had no -- other than hearsay knowledge, I had no actual knowledge as to whether or not these answers had been or had not been received.

THE COURT: In substance then it is your recollection that you did in effect say to Mr. Eno that you understood you had the original signed answers?

THE WITNESS: Yes, sir, I believe that's right.

THE COURT: Very good.

MR. ENO: I have no further questions.

THE WITNESS: Your Honor, I'd like to basically redirect myself. Will your Honor let me do that in narrative form or questions and answers.

THE COURT: I certainly will. You go right ahead in any form you feel is comfortable to you.

THE WITNESS: All right. I want to make a

statement to the court with respect to the testimony yesterday of Mrs. Blacker.

There is a September 5th date on the answers to interrogatories signed by Mr. Sands of the Independent Investor Protective League. With respect to that, my best recollection is that I had requested Mrs. Blacker to draw those interrogatory answers on the 4th, and that I had asked her to put the 5th date in the answers because of the fact that Mr. Sands was expected at my office the next day to sign them.

I further -- well, the other problem, the other problem I think I can probably bring out, Mr. Eno is going to be making a statement and I think on my cross I can bring out what I want to bring out.

THE COURT: All right. That is all you'd like to put on the record at this time?

THE WITNESS: Yes, sir.

THE COURT: Very good. You may step down.

(Witness excused.)

MR. ENO: I'd like to resume with Mr. Nevling and finish with Mr. Nevling.

JAMES KELLEY NEVLING, JR., resumed.

DIRECT EXAMINATION CONTINUED

BY MR. ENO:

Q Mr. Nevling before yesterday did you ever see Mrs. Blacker who identified herself as Mr. Bader's secretary?

A No, I never have.

Q Did you know the name of Mr. Bader's secretary when you visited his office to serve the order to show cause prior to the time you spoke to the lady who identified herself as Mrs. Blacker?

A No, I did not.

MR.BADER: Objected to as irrelevant and incompetent and immaterial.

THE COURT: Overruled.

Q On September 11th did you go to the office of Mr. Bader?

A Yes, I did.

Q Did you go there for the purpose of inspecting the interrogatories, the answers to interrogatories, which had presumably been received?

A That's correct,yes, at your request.

Q Will you tell me what happened, what occurred

at the time of your visit?

A I arrived at about a little bit after 9 o'clock in the morning, and Mr. Bader was there and opened the door for me -- well, at any rate, I came into the office. I don't recall if -- whether he opened the door or not. I was shown by him what appeared to be signed copies of two interrogatory answers, those being the answers of the Independent Investor Protective League and the answers of Mr. Randolph, and I asked about the other two interrogatory answers of Mr. Michael and Mr. Fagan, and Mr. Bader said that he could explain that, and gave me certain papers, including an affirmation of his which stated that he had not yet received the signed interrogatory answers of Mr. Michael or Mr. Fagan. So upon reading that affirmation that he gave me I became aware of this and I didn't ask him about it any further.

Q Did he volunteer anything further.

A There was some additional conversation concerning extensions of time, but I don't believe there was --

Q Did he say at any time that the answers of Fagan and Michael or any other answers had been inadvertently sent to us?

A No, he did not.

MR. ENO: I just want to have identified for the record the affirmation to which Mr. Nevling referred.

MR. BADER: Are you talking about my affirmation?

MR. ENO: Correct.

MR. BADER: I will concede it if you've got it on the record.

Q I show you an affirmation dated September 11th, and I ask you, Mr. Nevling, if this is the affirmation to which you referred.

MR. BADER: I concede that that affirmation was signed by me, your Honor, and it may be introduced if -- it is part of the record of the case in any event. I don't know whether it has to even be reintroduced in evidence. I concede the signature.

THE COURT: This is the one that you gave Mr. Nevling that morning, is that so?

MR. BADER: Yes, as part of the motion for an extension of time, your Honor, the one that you denied.

THE COURT: Very good.

MR. ENO: It is entitled "Affirmation in Support of Motion dated September 11th," and it is

part of thecourt papers.

I have no further questions of Mr. Nevling.

CROSS EXAMINATION

BY MR. BADER:

Q Mr. Nevling, when you met me at my office on September 11th, was I courteous or discourteous?

A I would say you were courteous to me.

Q And when I handed you those papers didn't I hand you carbon copies or photocopies.

Let's break that up, Mr. Nevling. First of all,did I give you photocopies of the original signatures of the Independent Investor Protective League and plaintiff Randolph's answers to interrogatories?

A My recollection is that first you showed me original answers which I think were on -- were ribbon copies.

Q Yes, sir.

A And that then at my request I asked for the Xerox copies or some sort of copies of the signature pages of these exhibits -- these documents, and at that point I think you gave me -- I don't know how to characterize them except that they are not -- they were not plain paper copies. I think they were treated paper carbons.

Q In other words, what I did, isn't it true, Mr.

Nevling, that I took these things to a photostat machine that I have, a treated copy for the photostat machine, not a Xerox, in the office, and simply ran these things through the machine and gave them to you?

A I assume that's how you did it. You left the room and you came back with the copies.

Q In other words, you didn't actually see me physically do it, did you?

A No, I did not.

Q But you have no doubt that you physically did it?

A I assume you did.

Q Incidentally, when you were in my office did you see the condition of my desk?

A I am not sure if -- which of the offices is your office. You took me into one office and let me sit in it for a while, and that offide, the desk in that office was covered with papers.

Q That was my office, Mr. Nevling. That was the one straight down through the hall, wasn't it,as you walked into the office?

A Well, as you come into the office there is an L-shaped hall going off to the left.

Q Right.

A And it was around the bend of the L, about half way down.

Q And an office.

A But off to the side of the L. It was not at the very top of the L, if you understand what I mean.

Q Do you know the color of the furniture in my office?

A No, I don't.

Q You don't remember whether there were soft chairs or hard chairs?

A I don't recall.

Q You don't remember whether they were upholstered chairs or not?

A I don't recall.

Q In any event, was there a big desk in that office, do you remember?

A Yes, there was.

Q Covered with papers of all kinds?

A That's correct.

Q You were in my office all right, Mr. Nevling but I can appreciate the fact that you did not know this.

Well, now, I gave you photocopies -- I gave you a motion for an extension of time, do you remember that?

A That's right.

Q I handed that to you at that time, didn't I?

I handed you motion papers?

A Yes, I believe so.

Q Were those motion papers that I handed you the, copies of those motion papers, ribbon copies or photocopies, do you remember?

A I believe they were -- they were not ribbon copies. They were --

Q They were photocopies, weren't they?

A I believe so.

Q Do you recall any other papers that I served on you in this case prior to this time or were you not that much in charge of the case?

A On that date I believe you gave me some other papers in addition to the motion for the extension of time, the copies of the signature page of the interrogatory answers of Independent Investor Protective League, and the signature page of the answers of Mr. Randolph, but I am not certain.

Q But I was just talking about -- I am not talking about it.

A You are not talking about September 11th?

Q No, I am talking about prior. We have had prior proceedings of various kinds in this case.

A That's true.

Q And I was just wondering if you are familiar with those or was Mr. Eno the person in charge and perhaps I am asking the wrong witness?

A Mr. Eno is in charge of the case but I did work on it for some time.

Q Do you recall,on any prior papers of the case, whether I also gave you photocopies rather than the ribbon copies of various documents?

If you don't know, Mr. Nevling, I won't press you.

A I am not certain of that because our normal office practice is to have duplicate copies made on our own machines and I have seen --

Q So you just wouldn't know that?

A I don't recall.

MR. BADER: All right, Mr. Nevling, you can step down.

THE COURT: Thank you, Mr. Nevling.

MR. ENO: May I have just one or two questions of Mr. Nevling?

MR. BADER: Of course.

THE COURT: Very good.

REDIREC EXAMINATION

BY MR. ENO:

Q When you were in the office, since Mr. Bader brought this up, when you were in the office with Mr. Bader did he hand you a set of interrogatories addressed to Touche Ross?

A Yes, I believe he did. And I think he also gave me a notice of deposition, if I am not --

Q Did he make any statements to you in connection with that at the time he gave them to you?

A He said that he was not going to give us any extension of time on anything henceforth and said that the other defendants could have additional time but that we could not have additional time. But I believe then he qualified that and said if we would give him an extension of time to serve answers to interrogatories he would be willing to give us an extension of time on all discovery until after some decision had been reached on our motion to dismiss his complaint.

MR. ENO: I have no further questions.

MR. BADER: Thank you, Mr. Nevling.

(Witness excused.)

L A W R E N C E F. E N O, called as a witness by defendant Touche Ross & Co., being first duly sworn, testified as follows:

THE WITNESS: Your Honor, I would like to speak in a narrative fashion, if I may.

THE COURT: Go ahead.

THE WITNESS: In order to make the record complete to the extent that I can, and I would like to start with September 9, 1974.

My secretary was apparently away that day and I had a substitute secretary. In the morning I received the message that has been marked here from Mrs. Rosen, who is a receptionist in our office, which is this message that's been marked as Exhibit H. When I received that message, your Honor -- well, before that -- there was apparently another phone call to me from Mr. Bader, and it is my practice to keep a record of my incoming and outgoing calls, and at 10:30 on that morning, according to this record that was kept by the substitute for my secretary, Mr. Bader called.

I was not available, I was in a conference elsewhere in the office, and when I returned and I got the message I tried to reach Mr. Bader, and this girl, who I forget what her name is, reported that she could

not get in touch with him.

I would first like to have marked this message sheet. The handwriting at the top, "Monday, September 9, 1974," the handwriting "Incoming" and "Outgoung," is my handwriting because this was a substitute for my secretary. I prepared it so she would know how to do it. The other handwriting is the handwriting of the secretary, except for the comment "LRE not available," which is something that I wrote in some time later when this series of events began to proliferate, and I'd like to offer that so that the record is complete.

THE COURT: Mr. Bader, any objection?

MR. BADER: May I see it, sir?

THE COURT: Surely.

MR. BADER: Could I ask a couple of questions on voir dire on this?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. BADER:

Q Mr. Eno, is this your handwriting?

A I have identified on the record which part of it is my handwriting.

Q I mean there is "Incoming, Mr. Golub," or

something like that,"Mr. Spanier," and "Outgoing, Mr. Bader."

A I said everything that I have not identified as mine was the handwriting of the substitute secretary.

MR. BADER: I have no objection, your Honor.

THE COURT: All right. It will be received.

(Defendant's Exhibit Q was received in evidence.)

THE WITNESS: I then wrote and had hand-delivered to Mr. Bader my letter of September,which has been marked -- may I see that?

(Paper handed to witness.)

THE WITNESS: -- which has been marked as Exhibit I, your Honor.

Has your Honor seen this letter?

THE COURT: I have it before me.

THE WITNESS: I now turn to the day of September 10th, your Honor.

I would like to first mark the incoming and outgoing calls that were received by me or my secretary and made by me on my secretary on that day, your Honor.

(Defendant's Exhibit R was marked for identification.)

xx THE WITNESS: The handwriting on this Exhibit R is the handwriting of my secretary.

The first incoming call is a call from Mr. Bader. That is reflected in the message that my secretary received,which is marked as Exhibit J.

I received that message some time after I came into the office. I can't recall what time I came into the office, but I think after I came in I attended to my mail and other things, and some time I would say around 10:30 or that area I put in a call for Mr. Bader, and I was advised by my secretary that he was unavailable and I asked to speak to Mr. Bader's secretary.

~~I said~~ to Mr. Bader's secretary that I was very anxious to get in touch with him, that it was a matter of great urgency, that did she know where he was. She wouldn't tell me where he was but she indicated that she knew how to reach him, and I told her that she had better get hold of Mr. Bader and have him get in touch with me very quickly, because if I didn't hear from him I intended to communicate with thecourt, and she indicated that she would try to get hold of Mr. Bader.

That was the sum and substance of that conver-

sation.

I may say that I heard Mrs. Blacker's testimony yesterday and it was inaccurate insofar as she stated that she had referred any message to me from Mr. Bader.

My call to Mr. Bader's secretary is the second outgoing call on this sheet.

Some time after that Mr. Bader's secretary called me. She said that she had been unsuccessful in reaching Mr. Bader, would I defer getting in touch with the court until 1 o'clock and she would try to get Mr. Bader to be in touch with me before 1 o'clock, and I said yes, I would, but that she had better exert herself to have Mr. Bader call me.

Very shortly after that Mr. Bader did call me, and I placed that call, your Honor, at about 12:30.

I told Mr. Bader in that call that I was very unhappy about these messages that I had received from him, I was unsatisfied with his statements that we would get photocopies in a few days, that I insisted upon seeing the originals immediately, and I wanted to see all of the original answers of all of the plaintiffs.

He said that I had the right to see them but that he was busy on a deposition and he couldn't show them to me immediately.

I said -- and I think he also added -- I am sure he also added, "But I will be free in a few days and I will show them to you."

I said that was unsatisfactory; I wanted to see them that day, and I said to him, "I don't believe you have them,"and he said, "I have them, you can take my word for it." And I said, "Well, I want to see them. I want to see them this afternoon, and I want to -- I will meet you in your office or have Mr. Nevling in your office when you return."

He said no, he said "That's not possible." He said, "I don't know where they are in my office, and I may have left them at home."

I said, "Very well, we'll be in your office tomorrow morning," and he said, "All right," and he indicated a time that was unsatisfactory to me, and I said, "We'll be there at 9 o'clock," and he made the comment, "Will you please give me time to get there from my home," and I said, "That's plenty of time to be there from your home. We'll be there at 9 o'clock."

Promptly after that conversation terminated I sent my letter to him of September 10th which confirmed that appointment to see the originals of the further answers of all of these plaintiffs. This has been

marked as Exhibit N. I don't know if your Honor has a copy of it.

THE COURT: I do.

THE WITNESS: Has this been marked for identification? I would like it in evidence.

MR. BADER: No objection, your Honor.

THE COURT: Received.

MR. BADER: I don't think there is any objection to any of the evidentiary matter that has been brought into this hearing. It seems to me it is all pertinent.

THE COURT: Very good. They may all be marked.

THE WITNESS: Now, your Honor, I would like to get into the record what occurred before the court on September 20, 1974, at the time that we argued our motion to dismiss in this case. I argued for the motion and Mr. Bader argued against it, and it involved the circumstances that are presently before the court.

I listened quite intently to what Mr. Bader said to your Honor, and promptly, after returning to my office that day, I dictated a memorandum of what he said. The memorandum contains not only statements of what he said but comments of mine. I would ask that this memoran-

dum be marked for identification, your Honor.

THE COURT: You can certainly do that.

(Defendant's Exhibit S was marked for identification.)

xx THE WITNESS: On the argument before your Honor Mr. Bader said that he left his office on September 5th at about 3 o'clock. He said that Mr. Sands was with him at the time that he left, and that he told Mr. Sands that if the answers of the other plaintiffs came in he should mail out the copies.

He said that after that, after he had left, Randolph's answers came in and that Mr. Sands inadvertently mailed out the copies of all of the answers instead of just Mr. Randolph's. There were comments by your Honor at that particular point which I will skip. They are in this memorandum if Mr. Bader wishes to comment upon them.

Your Honor asked Mr. Bader when Mr. Randolph's answers had come in and he said that his answers had come in in the 3 o'clock mail on September 5th.

Your Honor then asked Mr. Bader when he had first learned that the copies had been sent, of which he did not have originals, and Mr. Bader said that this was a question that he had been thinking about for quite a

while, that he had been contemplating, that he did not know exactly when he had learned it, but that he did know it when he had his conversation with me, he said.

Now, his conversation with me was, as I have testified at about 12:30 on September 10th.

Those are the statements of Mr. Bader which I would like to get into the record, your Honor, at this particular point.

THE COURT: What is the date of that?

THE WITNESS: That was September 20th, your Honor.

Now, your Honor, I would like to correct an inaccuracy that appears in one of my affidavits. In one of my affidavits I stated that the answers of these individual plaintiffs had come in the same envelope as the answers of Independent Investors Protective League. I had been given that information and I believed it to be true. I subsequently investigated it, and have come to the conclusion that there were two mailings, and I have located the envelope in which I think one or another of the individual answers came in. I can't testify as to whether all of them came in this envelope because this is the envelope in which one or the other of them arrived. And I would like -- would you please --

MR. BADER: I am sorry, sir.

THE WITNESS: I would like to have this envelope marked in evidence, please.

THE COURT: You may.

MR. BADER: I have no objection, sir.

(Defendant's Exhibit T was received in evidence.)

xx THE WITNESS: I would also like to have marked in evidence simply for the record with respect to my letter of September 9th -- I would like our office copy introduced because it shows the delivery of that letter by hand on that date, your Honor.

MR. BADER: I have no objection.

THE WITNESS: It can be introduced with the number and a letter -- or a letter with the number following it.

MR.BADER: By all means, your Honor. I certainly have no objection.

THE COURT: Let me see the envelope.

THE WITNESS: I have nothing further, your Honor.

CROSS EXAMINATION

BY MR. BADER:

Q Mr. Eno, are you the person in charge of this

case?

A I am.

Q Who do you represent?

A Touche Ross & Company.

Q Do you represent any other defendants?

A No.

Q Do you know who does?

A I know some of them.

Q Do you know a firm known as Shea, Gould?

A Yes.

Q Do you know a firm by the name of Rosenhaus, Markowich?

A I know of the firm, yes.

Q Prior to the time that these matters happened were you in touch with these other firms with respect to what was going on in the case?

A From time to time.

Q Did you ever check with those firms to see whether or not they got copies of those Randolph, Fagan and Michael interrogatory answers?

A I do not.

Q You don't know to this day whether they did or did not, do you?

A I do not, no.

Q I don't think you gave me your address, Mr. Eno.

A 175 Riverside Drive.

Q Mr. Eno, assuming that I had called you on September the 5th and had said to you, Mr. Eno, the interrogatory answers are going to be a few days later, but I will extend your time accordingly," would you have agreed to an extension of time?

A I can't tell you now what I would have done then.

Q Did you tell me somewhere along the line that you weren't going to give me any extensions of time?

A I did not.

Q You never told me that?

A I did not.

Q In other words, you might have given me an extension of time?

A I can't tell you now what I would have done then.

Q But you might have?

A It is conceivable that I might have, yes.

Q Is there any way that your client has been prejudiced by the fact that these interrogatory answers of Randolph came in --

THE COURT: I don't think that is an appropriate question for this.

MR. BADER: All right, I withdraw it, your Honor. I withdraw it.

Q Mr. Eno, are you reporting to Touche Ross & Company with respect to the matters involved in this hearing?

A First of all, I think that is a privileged communication, if I were reporting them to them.

THE COURT: I don't know that it is relevant, in any event.

MR. BADER: Withdrawn, your Honor.

THE WITNESS: Your Honor, can I make an objection in my capacity as attorney?

THE COURT: You may.

MR. BADER: You certainly can.

THE WITNESS: I object to the question.

MR.BADER: I withdraw it. In view of your Honor's suggestion I withdraw that. I withdraw that question.

Q Mr. Eno, you have received various papers from me in this case prior to this problem that we have had on these interrogatory answers, haven't you?

A Yes.

Q Various things, answers, amended answers, motions?

A Right.

Q Problems of that kind?

A That's correct.

Q Have you received ribbon copies or photocopies?

A Well, it's very easy to tell. We have our file here. I can riffle through it.

Q Can you do that for me, please?

A Surely.

THE COURT: You mean carbons or photos.

Q That's right, carbons or photos.

A I know I have received carbons from you.

Q I just want to know if you have ever received any photos.

A I am sure that I have. Here is one of them and here is another one. Here is another one.

MR. BADER: I have no further questions, your Honor.

THE COURT: All right.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Mr. Eno does that --

MR. ENO: Mr. Pickholz stated that I didn't

introduce them in evidence, but I think marking it for identification is sufficient,your Honor, because I testified to the facts that are in the memo that I consider relevant.

THE COURT: All right. Mr. Bader, do you want to address yourself to Mr. Eno's statements as to the representations made in court on the 20th of September?

MR. BADER: Well, the problem is, your Honor, I don't remember them, and if they were --

THE COURT: Why don't you examine Mr. Eno's memorandum?

MR. BADER: I have examined the memorandum and all I can tell you is this:

I don't remember the representations having been made. If they were made, they just aren't true, because the facts in this particular case are basically the facts that have been brought in the testimony, and, of course, it is possible that when this memorandum was -- when these representations were made, if in fact they were made, they may have been made based upon inaccurate information.

THE COURT: Let me see that memorandum.

(Document handed to court.)

THE COURT: I have some handwritten notes

here which I must say are cryptic in the extreme, and I have no objection to marking these as an exhibit for identification.

I have notes here, "Bader said to Sands on September 5, 'If answers come in want you to send answers out.'"

This is my notation from what I recall your saying to me. You say if that is what you said at the time, that is in error?

MR. BADER: That is in error, your Honor. Mr. Sands testified with respect to the matter. I frankly had not made an exhaustive investigation at that time.

THE COURT: But this was your --

MR. BADER: I understand that.

THE COURT: -- your statement of what you recalled saying to Mr. Sands.

MR. BANDER: Yes, your Honor.

THE COURT: "Bader said to Sands, 'If answers come in want you to send answers out.'"

MR. BADER: Apparently that is wrong, your Honor, because Mr. Sands testified that I did not give him such instruction.

THE COURT: What is your memory of that?

220

MR. BADER: Well, now that I have done over this matter, I believe Mr. Sands is probably right.

THE COURT: I see. All right. So you are not withdrawing from what you said but you think you were in error when you said that.

MR. BADER: I think I was in error when I said that.

THE COURT: On September 20th

MR. BADER: Yes, sir.

THE COURT: I see. All right. You want to mark my notes as Exhibit S1 in evidence here. Mark it Court's Exhibit S1 for identification, I think is sufficient.

(Court's Exhibit S1 was marked for identification.

THE COURT: Mr. Bader, do you want to address yourself to any of the other statements in that memorandum?

MR. BADER: Yes, sir. All I can is that --

THE COURT: Why don't you have it before you so you can look at it and see w-hat your position is with regard to any of them.

(Paper handed to Mr. Bader.)

MR. BADER: Yes. I don't believe that I

said that I -- I don't believe that I said that I did not know if -- I said to the court, as set forth in this memorandum, that I did know at the time of September 10th, at about 12:30 p.m., that I had -- that I either had or had not received -- let me see -- that the statement is made here that I did know at the time that I had the conversation with Mr. Eno on September 10th at 12:30 p.m., that I had known what happened at that point is incorrect. It would have to be incorrect. I could not have known that until the evening of September 10th, sir, and if I made such a statement before the court, all I can say is that I must have been confused.

In my letter to the court of September 11th I made no reference to any conversation with Sands. I do not mention Sands' name as the person who mailed the copies that some unknown person in the office mailed the copies. That is the letter of September 11th and that is correct. The letter of September 11th, your Honor, I did not know at that time that Sands had mailed the copies. I found that out only subsequently.

THE COURT: I see.

MR. BADER: Is there a third page to this memorandum, Mr. Eno?

MR. ENO: No.

MR. BADER: And that basically is the situation with respect to that memo, your Honor.

THE COURT: Those are the respects as to which you take issue with its contents?

MR. BADER: Yes. Well, the basic problem is, your Honor, at this point I have no recollection as to what I said to the court on the argument of the motion. If there are any inconsistencies between what I said to the court on the motion and what has come out in the testimony, all that I can say is that I must have been inaccurate at the time. At that point I wasn't under oath and it only was subsequent, when I did get under oath and I really made an exhaustive investigation of this to both check my time as to where I was and to check what Mr. Sands was doing and to make a complete and thorough check of the matter that I basically was able to determine the facts in this case, your Honor.

THE COURT: Very good. All right. That completes everybody's factual presentation?

MR. ENO: Yes.

MR. BADER: Yes, your Honor.

Would your want findings and conclusions?

THE COURT: Well, Mr. Eno, how do you propose to proceed? What relief are you going to be

asking for?

MR. ENO: Your Honor, what I thought I would do is present a memorandum to the court in which I would try to pull all of this detail together, and try to present a coherent picture of what we believe happened, and submit it to the court for the court's ruling, whatever disposition your Honor wishes to make. Certainly we will at that time in the memorandum suggest, your Honor, various courses that the court might take in this connection. I would appreciate it if I could reserve on that until we submit this memorandum.

MR. BADER: Could I have time to reply?

THE COURT: I think the best way to proceed would be for you to submit that and Mr. Bader will then have an opportunity to give consideration to it and take whatever stand proposes.

MR. BADER: Fine.

THE COURT: How long would you like?

MR. ENO: Can I have two weeks for that?

MR. BADER: I would like a little longer than that to reply. If your Honor could give me three weeks behond that, I'd appreciate it. If your Honor can't, well, I will have to make myself available.

THE COURT: I will do that. I will give Mr.

Eno two weeks, and I will give you three weeks beyond that.

MR. BADER: Thank you very much, your Honor.

MR. ENO: Thank you, your Honor.

MR. BADER: In other words, we will not have formal findings and conclusions, we will just have memoranda and what Mr. Eno feels should be done and what-comments I propose to make? -

THE COURT: Very good.

MR. BADER: Thank you, your Honor, and it's been a pleasure to appear before you. But I must say that my being a personal witness in a case is something I don't relish, and I hope I don't have to go through it again.

THE COURT: Good.

- -

225

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Dorothy Blacker	98			
James Kelley Nevling	141			
(Resumed)	195	198		
Rosalind Rosen	145			
Muriel Kresh	147	148		
I.Walton Bader (Resumed)		149		
Lawrence R. Eno	204	213		

EXHIBIT INDEX

Plaintiffs	Identificaion	In Evidence
3		165

Defendant		
P		192
Q		206
R	207	
S	211	
T		213

225

F 1 O 226

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE H. ENO
MURRAY COHEN
WILLIAM W. GOLUB
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY

SAMUEL I. ROSENMAN
1896-1973

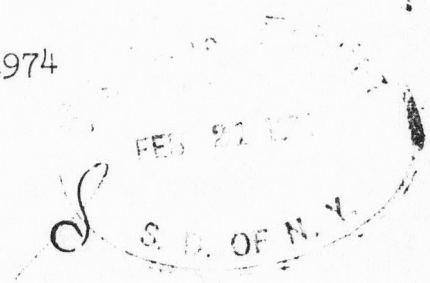
MURRAY HILL 8-7800
AREA CODE 212

CABLE ADDRESS
"ROCOKAY NEWYORK"

TELEX 12-5745

MEMO ENDORSED

February 13, 1974



Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York 10007

Re: Independent Investor Protective League v. Teleprompter Corp.
73 Civil 4133 (RO)

Dear Judge Owen:

On November 1, 1973, when this case was assigned to Judge Griesa, we served interrogatories on plaintiffs addressed solely to their stockholdings in defendant Teleprompter. On December 11, 1973, at a conference with Judge Griesa, at which the complaint was dismissed with leave to amend, plaintiffs were directed to answer the interrogatories (except that they could note in their answers objections to interrogatories as to plaintiffs' occupations and as to members of Independent Investor Protective League who did not own stock in Teleprompter) so that the answers would be available for any motion defendants might wish to make addressed to the amended complaint. In a letter to Judge Griesa dated January 15, 1974, plaintiffs stated that the answers would be served by February 1, 1974.

After that letter was sent, the case was reassigned to Your Honor. At a conference with Your Honor on January 30, 1974 plaintiffs were again directed to answer the interrogatories and plaintiffs' counsel stated that the answers would be served on February 4 or 5, 1974. Since our time to move to dismiss the amended complaint expires on February 15, 1974, Your Honor stated that we could have reasonable additional time beyond that date to make our motion to dismiss since the answers would not be forthcoming until February 4 or 5.

The answers to the interrogatories have still not been served. We accordingly assume, on the basis of the Court's statements on January 30, 1974, that our time to move to dismiss the complaint will be extended beyond February 13, 1974 for a reasonable time after the answers have been served.

Respectfully yours,

Lawrence R. Eno

LRE:mei

cc: I. Walton Bader, Esq.
Defendants' Counsel

30 days after answer served

R.O.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et. al.

Plaintiffs

73 Civil 4133 LFM

against

TELEPROMPTER CORPORATION et. al.

Defendants

ORDER AND
RULE 41 NOTICE OF VOLUNTARY
DISMISSAL PURSUANT TO FRCP 41

The remaining plaintiffs herein INDEPENDENT INVESTOR PROTECTIVE LEAGUE and the plaintiffs GARY MICHAEL and MICHAEL FAGAN (if the last-named plaintiffs have not been involuntarily dismissed previously by Judge Owen of this Court) hereby voluntarily dismiss thissuit against all defendants as provided in Rule 41 of the Federal Rules of Civil Procedure since there has not been any Answer filed in this case by any defendant and no Motion for Summary Judgment has been made by any defendant.

Dated : October 28th, 1974

Arthur Kass
ARTHUR KASS
Attorney for Plaintiffs
Croton Falls, New York

SO ORDERED: ~~OCTOBER 31, 1974~~
1-23-76
Lloyd F. MacMahon
U.S.D.J.

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

ARTHUR KASS, a member of the Bar of the State of New York, hereby certified under penalties of perjury that on October 28th, 1974 he served copies of the foregoing Notice by mail upon all of the defendants' attorneys.

Arthur Kass

MICROFILM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
OCT 1 8 1974
S. D. OF N.Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

v.

TELEPROMPTER CORP., ET AL.,

Defendants.

73 CIV. 4133

JUDGE MACMAHON

ORDER and
NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO RULE 41(a)(1)(i) FRCP OF PLAINTIFF MARTIN F. RANDOLPH, JR. ONLY

S I R S :

PLEASE TAKE NOTICE that MARTIN F. RANDOLPH, JR., a Plaintiff herein, hereby voluntarily dismisses the above-entitled action, as to him, against all of the Defendants herein.

None of the Defendants have filed either an Answer or a Motion for Summary Judgment in the above-entitled action.

This action continues as a Class Action against all Defendants in behalf of the Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

MICROFILM
OCT 18 1974

230

230

Pursuant to Order of JUDGE MACMAHON, this action has been consolidated with other pending actions and PHILIP JONES, ESQ. has been appointed General Counsel for the Plaintiffs in the consolidated actions.

Dated: October 9, 1974

Yours, etc.
BADER and BADER

By: _____
I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
(212) LE 2-6860
Attorneys for Plaintiff, Martin F. Randolph, Jr.

So ordered: OCT-15-1974
Lloyd F. MacMahon
U.S.D.J.

TO: HON. RICHARD OWEN,
Judge, U. S. District Court
for the Southern District of New York
U. S. Courthouse, Foley Square
New York, N. Y. 10005

Clerk of the Court, U. S. District Court
for the Southern District of New York
U.S. Courthouse, Foley Square
New York, N. Y. 10007

Messrs. Shea, Gould, Climenko & Kramer
Attorneys for Deft., Teleprompter Corp.
330 Madison Avenue
New York, N. Y. 10017

Messrs. Lawler, Sterling & Kent
Attorneys for Deft., Herbert Schlafly
500 Fifth Avenue
New York, N. Y. 10036,

Philip Jones, Esq.
General Counsel for Plaintiffs
845 Third Avenue
New York, N.Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
et. al.

Plaintiffs

against

Civil Action
73 Civil 4133 LFM

TELEPROMPTER CORP. et. al.

Defendants

PLAINTIFFS MICHAEL + FAGAN
NOTICE OF VOLUNTARY DISMISSAL
PURSUANT TO RULE 41(a)(1)(i)
FRCP

PLEASE TAKE NOTICE that GARY MICHAEL and MICHAEL FAGAN, plaintiffs herein, hereby voluntarily dismiss the above-entitled action, as to them, against all defendants herein.

None of the defendants have filed either an Answer or a Motion for Summary Judgment in the above-entitled action.

Dated : October 17th,1974

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York,N.Y. 10016

TO: SHEA, GOULD CLIMENKO & KRAMER
Attorneys for Defendant
TELEPROMPTER CORPORATION
330 Madison Avenue
New York NY 10017

LAWLER STERLING & KENT
Attorneys for Defendants
HERBERT SCHLAFY, et. al.
500 Fifth Avenue
New York, NY

ROSENHAUS,MARKEWICH & FRIEDMAN
Attorneys for named defendants
350 Fifth Avenue
New York NY 10001

ROSENMAN,COLIN,KAYE,PETSCHEK ETC.
Attorneys for Defendant TOUCHE ROSS & CO
575 Madison Avenue
New York NY 10022

PHILIP JONES,Esq.
845 Third Avenue
New York NY 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

Civil Action
73 Civil 4133 LFM

NOTICE

- -x

PLEASE TAKE NOTICE that the undersigned deems the purported voluntary dismissal of plaintiffs Gary Michael and Michael Fagan dated October 17, 1974 ineffective as a voluntary dismissal under FRCP Rule 41(a)(1)(i) as the amended complaint was involuntarily dismissed as to them by Hon. Richard Owen, U.S.D.J. on September 20, 1974.

Dated: October 18, 1974

Yours etc.,

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By: Lawrence R. Eno
A Member of the Firm
Attorneys for defendant
Touche Ross & Co.
575 Madison Avenue
New York, New York 10022
212-MU 8-7800

TO: BADER & BADER, ESQS.
Attorneys for Plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD CLIMENKO & KRAMER, ESQS.
330 Madison Avenue
New York, New York 10017

LAWLER STERLING & KENT ESQS.
500 Fifth Avenue
New York, New York 10036

233

ROSENHAUS, MARKEWICH & FRIEDMAN, ESQS.
350 Fifth Avenue
New York, New York 10001

PHILIP JONES, ESQ.
845 Third Avenue
New York, New York 10022

234 234

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Michael A. Salberg , being duly sworn, deposes and says that he is not a party to this action and is over 18 years of age. On the 18th day of October , 1974, deponent served the annexed Notice upon the following named attorneys at the addresses indicated by depositing true copies thereof enclosed in properly addressed postpaid wrappers in an official depository of the United States Postal Service within the State of New York:

Bader & Bader
274 Madison Avenue
New York, New York 10016

Shea, Gould, Climento & Kramer
330 Madison Avenue
New York, New York 10017

Lawler Sterling & Kent
500 Fifth Avenue
New York, New York 10036

Rosenhaus, Markewich & Friedman
350 Fifth Avenue
New York, New York 10001

Philip Jones
845 Third Avenue
New York, New York 10022

Michael A. Salberg

Michael A. Salberg

Sworn to before me this
22nd day of October , 1974

Steven F. Miller

STEVEN F. MILLER
Notary Public, State of New York
No. 31-4507150
Qualified in New York County
Term Expires March 30, 1975

235

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
AUG 6 1974
S.D. OF N.Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

CIVIL ACTION
73 Civil 4133
(RO)

NOTICE OF MOTION

235

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of Lawrence R. Eno and James K. Nevling, Jr., both sworn to August 2, 1974, the undersigned will move before Hon. Richard Owen, U.S.D.J., in Room 506 of the United States Courthouse, Foley Square, New York, New York at 2:15 P.M. on August 16, 1974, or as soon thereafter as counsel can be heard, (a) for an order, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, compelling plaintiffs to respond to Interrogatories dated November 1, 1973 propounded to plaintiffs by defendant Touche Ross & Co., as more particularly appears in said affidavits, and (b) if plaintiffs' attorneys do not stipulate as agreed to extend to September 16, 1974 defendants' time to answer or make any motion with respect to the amended complaint, for an order, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, so to extend defendants' time; and for

other and further relief as to the Court may seem just and proper.

Dated: New York, New York
August 2, 1974

Yours, etc.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By: Lawrence R. Eno
A Member of the Firm
Attorneys for defendant Touche
Ross & Co.
575 Madison Avenue
New York, New York 10022
MU 8-7800

TO: BADER & BADER, ESQS.
Attorneys for Plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN, ESQS.
Attorneys for defendant William J. Bresnan
350 Fifth Avenue
New York, New York 10001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

- -x

CIVIL ACTION
73 Civil 4133
(RO)

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in support of the motion by Touche Ross, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, to compel the plaintiffs to answer Interrogatories dated November 1, 1973 ("the Interrogatories") propounded to plaintiffs by Touche Ross, and for other relief.

Although the Interrogatories were propounded to plaintiffs on November 1, 1973, no answers were received until July 15, 1974, when we received in the mail a purported set of answers dated July 11, 1974 ("the Answers"). Despite the fact that it thus took 8 1/2 months for plaintiffs to respond to 11 simple and clear Interrogatories, the Answers are in large part unresponsive to the Inter-

rogatories. Of that period of 8 1/2 months, plaintiffs have been in default for over 5 months. On January 30, 1974, plaintiffs were directed by Judge Richard Owen to answer the Interrogatories, which were to be answered by February 5, 1974 (see Exhibit E annexed hereto). No answers, however, were served at that time or for over 5 months thereafter.

The Interrogatories are addressed almost entirely to the plaintiffs' stockholdings in Teleprompter Corp. ("Teleprompter") and thus to their standing to maintain this action. The answers to the Interrogatories were to be available for any motion defendants might wish to make addressed to the complaint and, later, the amended complaint. Judge Owen accordingly extended defendants' time to answer or move to dismiss the amended complaint to 30 days after answers to the Interrogatories were served (see Exhibit E annexed). Plaintiffs' attorneys agreed to stipulate to extend this time to September 16, 1974. An affidavit of our associate, James K. Nevling, Jr., Esq., in this connection is attached hereto. As appears from that affidavit, Mr. Nevling was told by one of plaintiffs' attorneys on July 24, 1974 that the stipulation so extending our time was ready to be picked up, but when our messenger arrived that day, he was told the stipulation had been mailed to us. It has not yet arrived, and if plaintiffs' attorneys do not perform their agreement, we request the

Court to extend our time to answer or move until September 16, 1974. This is because the Court has already determined that we are entitled to the long-delayed responses to the Interrogatories in connection with any answer, or any motion addressed, to the amended complaint.

Annexed hereto as Exhibit A is a copy of the amended complaint (the original complaint having been dismissed on December 11, 1973 by Judge Thomas P. Griesa for legal insufficiency), as Exhibit B a copy of the Interrogatories, and as Exhibit C a copy of the Answers.

There are four plaintiffs in this action: Independent Investor Protective League ("IIPL"), Gary Michael ("Michael") Michael Fagan ("Fagan") and Martin F. Randolph, Jr. ("Randolph").* The Interrogatories were addressed to all four (Exhibit B annexed). They called for answers "under oath and in writing, by each of the individual plaintiffs" and by IIPL. Only IIPL has purported to respond, and no response has been made by the individual plaintiffs. Indeed, the Answers (Exhibit C annexed) state the following on their face: "All information set forth herein is from the files of the IIPL." It is thus clear that the Interrogatories do not contain information from the individual plaintiffs themselves. Further, Rule 33(a) of

---

*These are the plaintiffs set forth in the summons and in the original complaint on file in this action. In the caption of the amended complaint, the name of Michael does not appear (Exhibit A annexed). No order dropping Michael as a plaintiff has been requested or entered, and he remains a plaintiff -- as the Answers indicate.

BEST COPY AVAILABLE

the Federal Rules of Civil Procedure requires answers to interrogatories "to be signed by the person making them." No individual plaintiff has signed the Answers, thus again demonstrating that no individual plaintiff has responded to the Interrogatories.

For the foregoing reason alone, the motion should be granted and the individual plaintiffs should be directed to answer the Interrogatories applicable to them as provided in Rule 33(a), namely, "separately and fully in writing under oath."

We shall now proceed to demonstrate the insufficient nature of the bulk of the Answers.

1

Interrogatory 2 asked the following and received the following response:

> "2. State the names and addresses of the members of IIPL.
>
> Answer: The IIPL has hundreds of Members. A Membership List is available at the offices of the IIPL, 19 West 24th Street, New York, N. Y. and will be shown, on request."

Rule 33(c) provides in substance that where an answer may be derived from business records, and the burden of deriving the answer is substantially the same for both parties, it is sufficient for the person to whom interrogatories are addressed to afford an opportunity to the other party to examine and copy the records.

Although the applicability of that Rule was doubtful in this case, we asked plaintiffs' attorneys for an opportunity to examine and copy IIPL's Membership List ("the List"). On July 16, 1974, we were thus furnished with a copy of the List, which is annexed hereto as Exhibit D.

Far from there being "hundreds of Members" of IIPL, the list contains less than 200 names. More important, although the Answers, in response to Interrogatory 4, state that the individual plaintiffs, Fagan, Michael and Randolph, are members of IIPL, their names do not appear upon the List. Either the statement that they are members of IIPL is incorrect or the List is incorrect. In these circumstances, we are clearly entitled, pursuant to Rule 33, to a copy of the List under oath.

We accordingly request that IIPL be directed to respond to Interrogatory 2 by annexing a list of the names and addresses of the members of IIPL under oath.

2

Interrogatory 4 asked for the names of the members of IIPL who owned any shares of stock of Teleprompter during any portion of the period of time covered by the complaint. In response to Interrogatory 4, the Answers list 8 names. In addition to plaintiffs Fagan, Michael and Randolph, they are Robert W. Stoddard ("Stoddard"), John C. Bernius ("Bernius"), Sylvia K. French ("French"), G. Dixon Mahon ("Mahon"), and Rose L. Gross ("Gross").

Interrogatory 5 then asked the following, and received the following response:

> "5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The information sought in this Interrogatory is set forth, in detail, in PARAGRAPH "FOURTH" of the Amended Complaint. The information with respect to Plaintiffs' RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers."

We defer consideration of plaintiffs Fagan, Michael and Randolph until discussion of the interrogatories where the information with respect to them purports to be given, and consider here only the other members of IIPL who allegedly owned Teleprompter shares.

The first objection to the response as to them is that it is made simply by a cross-reference to the allegations of paragraph Fourth of the amended complaint. The memorandum of law submitted by us with this motion demonstrates that an interrogatory may not be answered by cross-reference to another document, particularly to a pleading. For this reason alone, IIPL should be directed to serve a proper response to this Interrogatory as required by Rule 33(a).

Moreover, even if one were to consider the cross-reference to paragraph Fourth of the amended complaint, the response would be wholly insufficient for the following reasons:

(a) As to Gross, French, Bernius and Stoddard, paragraph Fourth only sets forth the dates on which they purportedly bought shares of stock of Teleprompter, the number of shares purchased on each date and the price paid. None of the other information called for by Interrogatory 5 is given, namely, the required information as to sales of Teleprompter stock by such persons, the number of shares presently owned by each such person and the name in which the shares were or are held. Even as to purchases of Teleprompter stock, paragraph Fourth does not show whether there were any purchases other than those listed.

(b) As to Mahon, paragraph Fourth sets forth the dates on which he purportedly purchased and sold shares of stock of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Mahon (and if so, the required information with respect thereto), the number of shares of Teleprompter presently owned by him or the name in which the shares were or are held by him -- all as required by Interrogatory 5.

Accordingly, the Court should direct a response to Interrogatory 5, first because the cross-reference to the complaint does not constitute a response and, second, even if the cross-reference were taken into account, the res-

ponse is insufficient.

3

Interrogatories 6 and 7 asked the following and received the following response:

> "6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").
>
> 7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.
>
> Answers: The addresses of these parties have been previously furnished. The undersigned does not have information in his files with respect to the occupations of these Plaintiffs, at the present time."

Except for the addresses of plaintiffs Randolph, Michael and Fagan (which are given in the Answers in response to Interrogatory 4), the response is entirely insufficient. It is no answer to say that "the undersigned [either the attorney for plaintiffs or IIPL] does not have in his files" the information requested. The Interrogatories were addressed to the individual plaintiffs, as well as to IIPL, and the individual plaintiffs have the information with respect to their occupations and their other addresses, as called for by Interrogatories 6 and 7. The individual plaintiffs should accordingly be directed to supply this information.

4

Interrogatory 8 asked the following and received the following response:

"8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held. -

Answer: Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH "FOURTH" of the Amended Complaint."

Here again, as shown by the accompanying memorandum of law, the purported response is wholly insufficient by virtue of its cross-reference to the amended complaint. For this reason alone, a response by plaintiff Randolph should be directed by the Court. In addition, the response is not made by the plaintiff Randolph himself as required by the Interrogatories and Rule 33. The response on its face sets forth only information claimed to be known by IIPL.

Even if one were to consider the cross-reference, the response would be insufficient. Paragraph Fourth of the Amended complaint sets forth the dates on which plaintiff Randolph purportedly purchased and sold shares of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales

by Randolph (and if so, the information respecting them), the number of shares of Teleprompter presently owned by him, or the name in which the shares were or are held by him -- all as required by Interrogatory 8.

5

Interrogatory 9 asked the following and received the following response:

> "9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The following sets forth the required information with respect to the Plaintiff MICHAEL:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	100	$30.00 "

The response is, first, wholly insufficient because not made by plaintiff Michael. It purports to set forth only information known to IIPL. As already noted, the Interrogatories were addressed not only to IIPL but to the individual plaintiffs as well. A response to Interrogatory 9 by plaintiff Michael should be directed as required by Rule 33(a).

Moreover, the response is on its face wholly insufficient. It shows only one purchase by plaintiff Michael,

and does not indicate whether there were other purchases by him (and if so, the required information with respect thereto), it does not show whether he made any sales of Teleprompter stock (and if so, the required information with respect thereto), it does not show how many shares of stock he presently owns, and it does not set forth the name in which the shares were or are held -- all as required by Interrogatory 9.

6

Interrogatory 10 asked the following and received the following response:

> "10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The following information is submitted with respect to the Plaintiff FAGAN:

Date of Purchase	No. of Shares Purchased	PRICE Per Share Paid
March 10, 1972	50	$29-7/8 "

The situation here is precisely the same as that with respect to the plaintiff Michael and Interrogatory 9. For all the same reasons [illegible] set forth, a response to In-

terrogatory 10 by plaintiff Fagan should be directed as required by Rule 33(a).

CONCLUSION

For the foregoing reasons, the following relief is requested:

1. That the Court direct the plaintiff Martin F. Randolph Jr. to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 8.

2. That the Court direct the plaintiff Gary Michael to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 9.

3. That the Court direct the plaintiff Michael Fagan to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 10.

4. That the Court direct the plaintiff IIPL to respond, separately and fully in writing under oath, to Interrogatory 5 and to Interrogatory 2 by annexing a list of the names and addresses of the members of IIPL.

Sworn to before me this
2nd day of August, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Marlene Herman
Notary Public

MARLENE HERMAN
Notary Public, State of New York
No. 41-6867365
Qualified in Queens County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated membership association, in behalf of its membership affected, MARTIN F. RANDOLPH, Jr. and MICHAEL FAGAN, indibidually, said parties suing in their own behalf and in behalf of the Classes involved herein similarly situated and circumstanced.

Plaintiffs

against

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being fictcious, the parties intended being those persons, firms, corporations, and associations involved in the unlawful acts involved herein.

Defendants

73 CIVIL 4133
TPG

AMENDED COMPLAINT

JURY TRIAL DEMANDED

COUNT ONE

FIRST: Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE is an unincorporated membership organization whose purpose is to protect the rights of security holders. It is a non-profit organization and has its office and place of business at 19 West 24th Street, New York, N.Y.

SECOND: The following sets forth a list of the members of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE who are adversely affected by the acts involved in this Complaint.

NAME OF MEMBER	ADDRESS
G. DIXON MAHON	Drawer 949 Ozona Texas
ROSE L. GROSS	New York, N.Y.

EXHIBIT A

BEST COPY AVAILABLE

NAME OF MEMBER	ADDRESS
MARTIN F. RANDOLPH, Jr.	70 Deer Hill Avenue Danbury Conn.
GARY MICHAEL	Danbury Conn.
MICHAEL FAGAN	Danbury Conn.
ROBERT W. STODDARD	108 Cherry Avenue West Sayville, L.I.
JOHN C. BERNIUS	116 Lincoln Avenue Sayville L.I.
SYLVIA K. FRENCH	1100 Park Avenue New York, N.Y.

THIRD: There may be other members of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE involved in the acts set forth in this Complaint. Said additional members will be brought to the attention of the defendants prior to the trial of this action.

FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELEPROMPTER CORP stock.

DATE OF TRANSACTION	NAME OF MEMBER	SHARES BOUGHT OR SOLD	PURCHASE OR SALES PRICE	NUMBER OF SHARE
February 1972	MARTIN F. RANDOLPH, JR.	200 bought	9 1/4 per share	200
May 1, 1973	MARTIN F. RANDOLPH JR.	bought	20 1/4 per share	400
August 10, 1973	MARTIN F. RANDOLPH JR.	sold	13 1/2 per share	400
Sept. 5, 1973	MARTIN F. RANDOLPH JR.	SOLD	9 1/2 per share	400
Nov. 12, 1973	MARTIN F. RANDOLPH JR.	SOLD	4 3/4 per share	200
	MICHAEL FAGAN	bought		
	GARY MICHAEL	bought		
Oct. 1971	ROSE L. GROSS	bought	$583.01	8 (now 32)
May 16, 1972	ROSE L. GROSS	bought	$1209.27	33
May 13, 1972	ROSE L. GROSS	bought	$964.77	15

BEST COPY AVAILABLE

DATE OF TRANSACTION	NAME OF MEMBER	SHARE BOUGHT OR SOLD	PURCHASE OR SALE PRICE	NUMBER OF SHARES
Nov. 13,1972	ROSE L. GROSS	bought	$791.72	25
Dec. 13,1972	ROSE L. GROSS	bought	$366.50	10
Dec. 28,1971	SYLVIA K. FRENCH	bought	28 1/2 per share	50
March 24,1972	SYLVIA K. FRENCH	bought	28 1/2 per share	150
Aug. 10,1973	JOHN C. BERNIUS	bought	13 1/2 per share	100
Sept. 5,1973	ROBERT W. STODDARD	bought	8 1/2 per share	100
Jan. 8,1973	G. DIXON MAHON	bought	900 shares $30.205 per share	900
Nov. 21,1973	G. DIXON MAHON	sold	$4.125 per share	900

FIFTH: Jurisdiction of this Court to consider this Count is granted pursuant to the Securities Acts of the United States and, in particular, but without limitation as to other sections and laws which may apply, Section 17 of the Securities Act of 1933 (15 USC 77q), Section 22 of the Secutities Act of 1933 (15 USC 77v), Section 9 of the Securities Exchange Act of 1934 (15 USC 78i), Section 10(b) of the Securities Exchange Act of 1934 (15 USC 78j(b), Section 14 of the Securities Exchange Act of 1934 (15 USC 78n), Section 18 of the Securities Exchange Act of 1934 (15 USC 78r), Section 20 of the Securities Exchange Act of 1934 (15 USC 78t), and Section 32(b) of the Securities Exchange Act of 1934 (15 USC 78aa).

SIXTH: Defendant TELEPROMPTER CORPORATION is, on information and belief, a foreign corporation having its principal place of business at 50 West 44th Street, New York, N.Y.

SEVENTH: Defendant TOUCHE ROSS & COMPANY is, on information and belief, a partnership having

EIGHTH: Defendants HERBERT SCHLAFLY, WILLIAM BRESNAN and MARVYN CARTON are, on information and belief, officers, directors or persons in control of the defendant TELEPROMPTER CORPORATION who have participated in the unlawful acts involved herein and are thus personally liable therefor.

NINTH: Prior to the purchase of the stock involved herein by all of the members of the Class involved, the earliest date of purchase alleged herein being December 28,1971 the defendant TELEPROMPTER CORPORATION made a number of false and misleading statements in various published material. All of such false and misleading statements are not presently in the possession of the plaintiffs but all will be supplied prior to the trial of this action and subsequent to full examination of the defendants. However the following specific false and misleading statements are alleged herein. The specific allegations made in this complaint shall be set forth in order with the earliest misrepresentations set forth first.

1- In the 1969 annual report of TELEPROMPTER CORPORATION the cost of services, and other expenses are set forth at $10,035,454. This figure is false and the costs involved are considerably greater. The defendant, wrongfully, has capitalized various current expenses, and, in particular, the capitalization of pre-operating expenses and development costs and then, after a system becomes operational, amortizing said costs over a ten year period. These costs are current expenses and should have been set forth as such. Such proper costing would have given a far smaller earnings picture and thus the price of the stock would have been less.

2- In various reports filed with the Securities and Exchange Commission, and, in particular, the 10K report for the

year ended December 31, 1970, the proxy statement submitted with respect to the annual meeting to be held May 21, 1970, the proxy statement submitted with the Notice of Annual Meeting of Shareholders of October 7, 1971, and the 10K report with respect to the fiscal year ending Dec. 31, 1972 the defendant again sets forth various earnings figures which are false and misleading and higher than justified by the facts, again based upon the wrongful capitalization of current expenses.

3- In various reports filed with the Securities and Exchange Commission, and in public statements, false and misleading figures with respect to the number of subscribers and miles of distribution system and cable laid have been false and misleading. Specifically, but without prejudice to the showing of other instances of these facts, the proxy statement with respect to the annual meeting of May 21, 1970 contains a statement, on page 27, that the number of primary subscribers of the defendant were at least 122,940 in 1969 with an additional 3,353 subscribers, 18,458 subscribers and 20,124 subscribers involved in systems which were previously under construction. In the 10K report for the fiscal year ending December 31, 1972 on pages 16, 17, 18 and 19 there are purportedly detailed reports of the number of subscribers in each of the various systems, the miles of distribution systems, etc. These reports are also false and misleading.

4- The said defendant TELEPROMPTER CORPORATION, on information and belief, carried subscribers who have cancelled their contracts with said defendant as active subscribers and has failed to remove said cancelled subscribers from the records of said corporation thus giving the public a totally false and misleading picture of the business of the said corporation.

by the defendant TELEPROMPTER CORPORATION has been, on information and belief, misstated. The actual number of miles of such cable actually laid is substantially less than reported by said corporation.

TENTH: The aforesaid financial irregularities have, on information and belief, appeared in various financial statements which have been certified by the defendant TOUCHE ROSS & COMPANY thereby making said defendant liable for damages involved.

ELEVENTH: On information and belief the defendant TELEPROMPTER CORPORATION has been guilty of various other irregularities. The details of these irregularities are not specifically known to the plaintiffs as specifics at the present time but further information on these irregularities will be obtained after an inspection of the books and records of the said defendant TELEPROMPTER CORPORATION will be had and an examination on the records of the Securities and Exchange Commission with respect to the on-going investingation of TELEPROMPTER CORPORATION can be examined. However there have been widespread allegations made that there has been substantial fraud in the construction program of the said TELEPROMPTER CORPORATION and this allegation is made in addition to the specific allegation made hereinabove that the actual number of miles of cable laid by the said defendant TELEPROMPTER CORPORATION does not accord with the published figures.

TWELFTH: This action is a Class Action suit and the following set forth the relevant Class Action allegations.

a- The Class involved are purchasers of the stock of the defendant TELEPROMPTER CORPORATION from December 28, 1971 to September 5, 1973. Members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE are members of this Class.

b- The number of members of this Class are not known with certainty but are believed to number at least One Hundred Thousand persons, firms, corporations and/or associations.

c- The Class in too numerous to be individually joined in this action.

d- This Class Action suit is brought under Rules 23(a), 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Proceedure.

e- The representative parties are competent to represent the class. One of the parties, the INDEPENDENT INVESTOR PROTECTIVE LEAGUE is a voluntary organization having no "axe to grind" making said organization a superior Class Representative.

f- A Class Action is a superior method of resolving this controversy since the issues of fact and law involved in this suit are common to the class and predominate over any issues of fact involving individual members.

g- Litigation involving the issues herein is already concentrated in this forum and the issues involving capitalization of current expenses are involved herein in two additional suits pending in this Court. The issues in this action with respect to construction fraud, false reports as to the number of subscribers, and false reports with respect to the miles of cable laid are limited to this specific action but are related to the other issues.

THIRTEEN: By reason of the acts alleged herein the plaintiffs and the Class that they represent, have sustained substantial losses. A reference to the tables annexed indicates purchases of shares at prices as high as $30.205 per share and sales as low as $4.125 per share. The purchases made would not have been made at these high figures had the facts with respect to the matters alleged

in this Complaint been known or, alternatively, the market price of the shares of TELEPROMPTER CORPORATION would have been substantially less.

COUNT TWO

FOURTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","SIXTH", "SEVENTH","EIGHTH","NINTH","TENTH","ELEVENTH","TWELFTH" and "THIRTEENTH" for the foregoing Complaint as though fully set forth at length herein.

FIFTEENTH: Jurisdiction of this Count is given specifically by the Securities Acts, in particular Section 10(b) thereof and Rule 10B-5 of the Rules of the Securities and Exchange Commission.

SIXTEENTH: The specific reference to the said sections is being made herein since the allegations made are definitive of deceptive and misleading practices with respect to the purchase and sale of securities.

COUNT THREE

SEVENTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","SIXTH", "SEVENTH","EIGHTH","NINTH","TENTH","ELEVENTH","TWELFTH" and "THIRTEENTH" of the foregoing Complaint as though fully set forth at length herein.

EIGHTEENTH: This Court acquires jurisdiction of this Count since it is a substantial and related claim to the Counts for Securities Acts violations and thus this Court acquires jurisdiction thereof pursuant to the principles of "pendent jurisdiction:.

NINETEENTH: This is a Count for common-law fraud and deceit against the defendants herein based upon the facts alleged herein.

WHEREFORE PLAINTIFFS DEMAND:

1- Damages against the defendants, jointly and severally, in behalf of the Class involved, in an amount sufficient to compensate them for their losses involved, said amount believed to be in the sum of Ten Million ($10,000,000) Dollars.

2- The aforesaid damages to be assessed in connection with each Count of the Complaint

I.Walton Bader
General Counsel
INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, N.Y.
TELEPHONE (532)-6860

CERTIFICATE OF SERVICE

I, I.WALTON BADER, a member of the Bar of the State of New York, under penalties of perjury pursuant to the provisions of the New York CPLR, hereby certify that on January 3rd, 1973 I mailed a copy of the foregoing amended complaint to SHEA, GOULD, CLIMENKO etc Attorneys for the defendant TELEPROMPTER CORPORATION, to Messrs. ROSENMAN, COLIN, etc., attorneys for the defendant TOUCHE ROSS & COMPANY and to Messrs. LAWLER, STERLING & KENT, Attorneys for the defendant HUBERT J. SCHLAFLY.

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs, -against- TELEPROMPTER CORP., et al., Defendants.	Civil Action 73 Civil 4133 (TPG) INTERROGATORIES 258

INTERROGATORIES TO PLAINTIFFS
(FIRST SET)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant Touche, Ross & Co., by its attorneys, Rosenman Colin Kaye Petschek Freund & Emil, hereby propounds the following Interrogatories to plaintiffs, to be answered within thirty (30) days after service hereof, under oath and in writing, by each of the individual plaintiffs and by plaintiff Independent Investor Protective League by an officer or duly authorized agent thereof.

The Interrogatories are as follows:

1. State (a) (i) the date when and (ii) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether there are any articles of association or similar documents of IIPL, and if so (c) all of the places where the same may be found.

2. State the names and addresses of the members of IIPL.

3. State (a) the names and addresses of the (i) offi-

cers, (ii) executives, and (iii) employees of IIPL, and (b) the positions occupied by each of them.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per

shares paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

11. (a) State whether IIPL at any time owned any shares of Teleprompter, and if so, state (b) (i) the date when it furst purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (c) (i) the date of each subsequent purchase by it of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (d) (i) the date of each sale by it of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Dated: New York, New York
November 1, 1973

...rs, etc.,

RO...N COLIN KAYE PETSCHEK FREUND &
F...

By _____
A... of the Firm

Attorneys for Defendant Touche, Ross & Co.
575 Madison Avenue
New York, New York 10022
MU 8-7300

TO:

BADER & BADER, ESQS.
Attorneys for plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

OFFICE OF THE GENERAL COUNSEL
Securities and Exchange Commission
Washington, D.C. 20549

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

CIVIL ACTION
73 Civil 4133
JUDGE OWEN

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

ANSWERS

----------x

PLAINTIFFS' ANSWERS TO INTERROGATORIES OF THE DEFENDANT TOUCHE, ROSS & CO. (FIRST SET)

Plaintiffs answering the Interrogatories of the Defendant TOUCHE, ROSS & CO. state, as follows:

All information set forth herein is from the files of the IIPL.

1. State (a) (I) the date when and (II) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether there are any articles of association or similar documents of IIPL, and if so (c) all of the places where the same may be found.

Answer: The IIPL is an Unincorporated Association organized in [illegible]. It has a Constitution which is available for inspection at the office of IIPL, 19 West 24th Street, New York, N. Y. 100[illegible].

EXHIBIT C

2. State the names and addresses of the members of IIPL.

Answer: The IIPL has hundreds of Members. A Membership List is available at the offices of the IIPL, 19 West 24th Street, New York, N. Y. and will be shown, on request.

3. State (a) the names and addresses of the (i) officers, (ii) executives, and (iii) employees of IIPL, and (b) the positions occupied by each of them.

Answer: The following are the Officers of the IIPL with their respective addresses:

Richard A. Gordon, President
19 West 24th Street
New York, N. Y. 10010

Charles J. Lillin, Vice President
19 West 24th Street
New York, N. Y. 10010

Merrill Sands, Secretary
Pritton Hill Road
Brookfield Center, Connecticut

The Directors of the League are the Officers. There are no other employees.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: Michael Fagan
Watson Lane
Danbury, Connecticut

BEST COPY AVAILABLE

Gary Michael
100 Chalet Village
Stockbridge, Vermont

Martin F. Randolph, Jr.
70 Deer Hill Avenue
Danbury, Connecticut

Robert W. Stoddard
108 Cherry Avenue
West Sayville, Long Island

John C. Bernius
116 Lincoln Avenue
Sayville, Long Island

Sylvia K. French
1100 Park Avenue
New York, N. Y.

G. Dixon Mahon
Drawer 949
Ozona, Texas

Rose L. Gross
3099 Brighton 6th Street
Brooklyn, N. Y.

5. With respect to each member listed in response to Interrogatory 4, state (a) (I) the date when such member first purchased shares of stock ("shares") of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) (I) the date of each subsequent purchase by such member of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each purchase, (c) (I) the date of each sale by such member of

shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

Answer: The information sought in this interrogatory is set forth, in detail, in PARAGRAPH "FOURTH" of the Amended Complaint. The information with respect to Plaintiffs' RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers.

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to interrogatory 6, and if so (b) state such other addresses and occupations.

Answers: The addresses of these parties have been previously furnished. The undersigned does not have information in his files with respect to the occupations of these Plaintiffs, at the present time.

8. With respect to Randolph, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the

price per share paid for said shares, (b) (I) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such date, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH "FOURTH" of the Amended Complaint.

9. With respect to Michael, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) (I) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of

shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the required information with respect to the Plaintiff MICHAEL:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	100	$30.00

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following information is submitted with respect to the Plaintiff FAGAN:

Date of Purchase	No. of Shares Purchased	PRICE Per Share Paid
March 10, 1972	50	$29-7/8

11. (a) State whether IIPL at any time owned any shares of Teleprompter, and if so, state (b) (I) the date when it first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (c) (I) the date of each subsequent purchase by it of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (d) (I) the date of each sale by it of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Answer: The IIPL does not own any stock in TELEPROMPTER nor has it ever owned any such stock. However, its' raison d'etre is the protection of investors against discriminatory and predatory practices.

Dated: June 11, 1974

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs

By: _____

I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860.

TO: All the Attorneys
for the Defendants

VERIFICATION

STATE OF : NEW YORK)
) ss.:
COUNTY OF : NEW YORK

RICHARD A. GORDON being duly sworn, deposes and says that he is the President of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE, that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same are true to his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes them to be true.

SWORN TO BEFORE ME

THIS 11th DAY OF
July
~~JUNE~~, 1974.

Richard A. Gordon

NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. Walton Bader, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on June 11, 1974, I mailed a copy of the within document to all the attorneys for the Defendants, by depositing same in the mail-chute at 274 Madison Avenue, New York, N.Y. 10016.

I. Walton Bader

271

THE ATTACHED NOT ON LIST

ROBERT B. SAULE

13618 East River Road
Columbia Station Ohio
44028

R-L Instrument Corp

Columbia Station Ohio
44028

A.David Nawrocki

447 East 65th Street
Apt. 2E
New York NY 10021

I.D. Putterman

1094 New York Avenue
Brooklyn NY 11203

Leona Gale

P.O. Box 770
Ashland Oregon

John N. Bancroft Jr.

215 Barnwell Avenue
Aiken South Carolina 2980

Lloyd W. Ewald

1082 North 8th Street
Rochelle,Ill.61068

Anthony G. Hoogenbloom

6031 West Rocking Circle
Tucson Airzona 85713

Miriam H. Girsh

2101 Chestnut Street
Philadelphia Penn 19103

Harry Burns

141-25 Northenn Blvd.
Flusihng N.Y.

Ann Burns

141-25 Northern Blvd.
Flushing N.Y.

EXHIBIT D

[illegible]
[illegible] BELMONT ST
BOSTON, MASS. 02109

MR NORM ALLEN
1467 ELSTON AVE
CHICAGO,ILL. 60622

MR JOSEPH V. ALLEN
2682 COUNTRY CLUB BLVD.
CLEVELAND, OHIO 44116

MR NORMAN ALLEN
100 ELIZABETH LANE
DOWNERS GROVE, ILL. 60515

MRS. GERTRUDGE ANDAUER
636 BROOKLYN AVE
BROOKLYN,N.Y. 11203

RAY ALPERT
2 ELLWOOD ST
NEW YORK,N.Y. 10040

MR DAVID D. ACKERMAN
1522 BRYANT AVE
BRONX,N.Y. 10460

MR ALAN M. ADES
10 WEST 33 ST
NEW YORK,N.Y. 10001

MR JOHN C. BERNIUS
116 LINCOLN AVE
SAYVILLE, L.I.,N.Y. 11796

MR. MATTHEW R. BIRK
90-13 68th AVE
FOREST HILLS, N.Y. 11375

MR JACK B. BACKER
998 E. MARKET ST
AKRON,OHIO 44305

A. G. BROTZE
150 EAST 69th ST 9D
NEW YORK,N.Y. 10021

MR MEL BICKFORD
3917 ARTHUR AVE NORTH
SEAFORD,L.I., N.Y. 11783

MRS EMILY BEETS
9-07 149th ST
WHITESTONE,L.I.,N.Y. 11357

DR HENRY BAER
919 THE ALAMEDA
BERKELEY,CALIF. 94707

MR LEWIS BELLIN
BEACON HOTEL 75th ST ON BWAY
NEW YORK,N.Y.

MISS IRMA H. BRANNAN
1102 HOME AVE.
FORT WAYNE, IND. 46807

MR. D. BOLGER
PALMER ASSOCIATES
15 WEST 11th ST.
NEW YORK,N.Y. 10011

MR OTTO E. BENZ
22627 CLARENDON ST
WOODLAND HILLS, CALIF. 91364

MR GERALD BRUMM
4730 SO. KOLIN AVE.
CHICAGO,ILL. 60632

MR WILLIAM C. BUCK
937 NORTH MILLER DRIVE
TUCSON, ARIZ. 85710

MR ELMER J. BONYKO
1435
PRINCE CHARLES AVE.
WESTLAKE, OHIO 44145

M. N. BEITMAN
1760 BALSAN ROAD
HIGHLAND PARK, ILL. 60035

D. BINDNER
P.O. BOX 99
PELHAM,N.Y.

MR MORTIMER J. CONSTANTINE
SUITE 505 1117 ST. CATHERINE ST., W.
MONTREAL 110, QUEBEC,CANADA

MR WILLIAM CARLSEN
749 LOGAN AVE
BRONX,N.Y. 10465

MR ISAAC COOPER
6 SO. DEAN ST.
ENGLEWOOD, N.J. 07631

MR DOMINICK C. FIODELLI
747 ADAMS AVE
ELIZABETH, N.J. 07201

MR. HARVEY COWEN
98-32 57th AVE
LEFRAK CITY,
ELMHURT, N.Y. 11368

MR THEODORE COX
328 MANCHESTER RD
RIDGEWOOD, N.J. 07450

[redacted] COPSES
880 SO. PINE ST
SPARTANBURG, S.C.

MR PHILIP COHEN
1345 BOXWOOD DRIVE E.
HEWLETT HARBOR,N.Y. 11557

MR EDGAR DEBANY
42 OLIVE ST
BROOKLYN, N.Y. 11209

MR BENJAMIN P. DAVIDSON &
JOAN DAVIDSON
723 WESTSHORE TRAIL
SPARTA, N.J. 07871

MR GREGORY D'ALESSIO
8 HENDERSON PLACE
NEW YORK,N.Y. 10028

MR ANTHONY F. DE LA PENA
2915 WINTHROP ROAD
SHAKER HEIGHTS,OHIO 44120

MR LAWRENCE E. de NEUFVILLE
16 HUNTER DRIVE
WEST HARTFORD,CONN. 06107

MR RALPH DE BASIO
290 6th AVE
NEW YORK,N.Y. 10014

MR MARIO DI GIOVANNI
43 CARMEN ST
NEW YORK,N.Y. 10014

MR H. ROBERT DYCKOFF
860 PARK LANE
VALLEY STREAM,N.Y. 11580

MR JAMES L. DE PALMA,JR.
1001 JEFFERSON AVE
RAHWAY, N.J. 07065

MR JOSEPH DANNHAUSER
190 CLAREMONT ROAD
FRANKLIN PARK,N.J. 08823

MR WILLIAM B. DRAKE, JR.
PO BOX 3372
SAN FRANCISCO,C[redacted]

LEILA DRAKE
31 E. 72nd ST
NEW YORK,N.Y. 10021

MR BILL T. DIANGIKES
880 SO. PINE ST
SPARTANBURG, SO.CAR.

MR WILLIAM B. DRAKE
PO BOX 3372
SAN FRANCISCO, CALIF. 94119

[redacted]

MR DAVID ELLIOT
118 W. 79th ST
NEW YORK,N.Y. 10024

SYLVIA K. FRENCH
1100 PARK AVE
NEW YORK,N.Y.

M. FLEISCHMAN
166 RODNEY ST
BROOKLYN,N.Y.

LENNY FREEMAN
18-65 211 ST
BAYSIDE NY 11360

MR JOHN FLANAGAN
85-15 144th ST
JAMAICA, N.Y. 11435

MRS JAMES FELDMAN
9202 VENETIAN HWY
RICHMOND,VA. 23229

MR WILLIAM FRIEDMAN
100 WAVERLY ROAD
SCARSDALE,N.Y. 10563

MR ROBERT D. FREED
104 MT. AIRY ROAD
BERNARDSVILLE, N.J. 07924

MR JOHN L. FINLAY
287 RIVERSIDE AVE
WESTPORT,CONN. 06880

MR JOE L. GRIFFITH
4612 AMESBURY NO. 183
DALLAS,TEXAS 75206

MR ARCHIE GOLDHOR
942 E. 9th ST
BROOKLYN,N.Y. 11230

GUMERSELL PROPERTIES,INC.
383 PARK ST
MONTCLAIR,N.J. 07043

MRS ROSE L. GROSS
3099 BRIGHTON 6th ST
BROOKLYN,N.Y. 11235

MR RONALD GELHOFF
2815 WILDWOOD LANE
STEVENSVILLE,MICH. 49127

MR GEORGE GREEN
520 MERRITT AVE., APT. E
OAKLAND, CALIF. 94610

[redacted]

PHILIP S. HOROWITZ
1073 HOPKINSON AVE
BROOKLYN,N.Y. 11236

M.J. HATFIELD
BOTSFORD HILL RD
R-2 NEWTON, CONN. 06470

DAVID HATFIELD
NORTHWEST CORNER ROAD
NORWICH,CONN. 06360

MR HOCHSTER
15 SPIER AVE
ALLENHURST,N.J. 07711

RICHARD A. HOUCHIN
2619 WASHINGTON BLVD.
MARINA DEL RAY, CALIF. 90291

MOE HELFT
8180 SO OCEAN DR
HALLONDALE,FLA. 33009

L.M. HEINEMAN
PO BOX 836
HAWTHORNE, CALIF. 90250

GIDEON O. HIRSCH
219 BRONX RIVER RD
YONKERS,N.Y. 10704

ANTHONY G. HOOGAN
6031 WEST ROCKING CIRCLE
TUCSON,ARIZ. 85713

BERNARD H. HOFFMAN
532 WEST 22 ST
NEW YORK,N.Y. 10011

JACK HIRSH
1901 WALNUT ST
PHILA.,PA. 19103

MORTON JARASHOW
4-39 2nd ST
FAIRLAWN,N.J. 07410

TURNBULL-GUMERSELL-DAVIDSON-JONES
383 PARK ST
UPPER MONTCLAIR,N.J.

IRENE JOHNSON
86-15 BROADWAY
ELMHURST,N.Y. 11373

MARSHA KROLL
THE NETWORK PROJECT
104 EARL HALL
COLUMBIA UNIV.
NEW YORK,N.Y. 10027

STEFAN KIRPAN,JR. & VERONICA
660 ELM AVE
RAHWAY, N.J. 07065

ABRAHAM J. KLEIN
460 NEPTUNE AVE
BROOKLYN,N.Y. 11224

RUTH L. KAUFMAN
JOSEPH KAUFMAN
200 DOGWOOD RD
VALLEY STREAM, N.Y. 1158

MEL KRONISH
23 ELVES LANE
LEVITOWN, L.I.,N.Y. 1175

JEROME KELIN
315 E. 86th ST
NEW YORK,N.Y.

JAMES KEENE
160 RIVERSIDE DRIVE
NEW YORK,N.Y.

MISS LILLIAN KOCYICK
75 HENRY ST
BKLYN.,N.Y. 11201

JOHN KENNEDY
73 ALLY COURT
BKLYN.,N.Y. 11229

JAMES M. KEANE
1109 ROSEWOOD WAY
ALAMEDA,CALIF. 94501

JEROME KLINE
315 E. 86 ST APT 17
NEW YORK,N.Y. 10028

IRVING L. KAPLAN
24549 HAWTHORNE DR.
BEACHWOOD,OHIO 4412

ROBERT W. KELLER
c/o INTERNATIONAL N
80 BROAD ST
NEW YORK,N.Y. 10004

GEORGE E. LEWIS
P.O. BOX 27
LEBANON,TENN. 37087

ARTHUR B. LEWIS
21 RIVER ST
WOODSTOCK,VERMONT 0

GERALD J. LEVAN
ONE LAFAYETTE PLAI
DETROIT,MICH. 4820

JANICE LIBERMAN
151 TREMONT ST
BOSTON, MASS. 02111

LEONARD LOREN
300 EAST 40 ST
NEW YORK, N.Y.

CARL LEVANDER
150 BUTTERNUT LANE
STAMFORD, CONN.

MR ROBERT G. MORRIS
25874 HATTON ROAD
CARMEL, CALIF. 93921

MR ANTHONY A. MANHEIM
30 BROAD ST
NEW YORK, N.Y.

G. DIXON MAHON
DISTRICT ATTORNEY
P.O. DRAWER 949
OZUNA, TEXAS 76943

EDWARD MICHAEL MURRAINE
61 HAMILTON PLACE
NEW YORK, N.Y. 10031

MRS S. MOSNER
3133 BRIGHTON 7th ST
BROOKLYN, N.Y. 11235

MR & MRS THOMAS MARCUS
17090 N.E. 14th AVE
APT 215
NO. MIAMI BEACH, FLA. 33162

MISS VERONICA MASKVIWICZ
175 BALDWIN PK
BLOOMFIELD, N.J. 07003

ETHEL MARTZ
1740 OCEAN AVE
BKLYN., N.Y.

ALVIN MARTZ
2 HORIZON RD
FORT LEE, N.J. 07

JOHN F. MAGDA
3023 AVE. T.
BKLYN., N.Y. 11229

ETHEL MELATZSKY
83-19 141st ST
JAMAICA, N.Y. 11435

BERNARD H. MARKS
425 E. 79 ST
NEW YORK, N.Y.

SADIE MOSNER
3133 BRIGHTON 7th ST
BKLYN., N.Y. 11235

WILLIAM A. MICHEL
40-04 BOWNE ST
FLUSHING, N.Y. 11354

CHARLOTTE K. MICHEL
40-04 BOWNE ST
FLUSHING, N.Y. 11354

IRVIN MEISALES
3153 CAMDEN LANE
MERRICK, N.Y.

MR M. V. McLAUGHLIN
55-03 31st AVE
WOODSIDE, N.Y. 11377

SADIE MOSNER
3133 BRIGHTON 7th ST
BKLYN., N.Y.

WENDELL A. NELSON
2823 CLAREMONT PLACE, N.E.
ALBUQUEQUE, N. MEXICO 87110

EDWARD A. NEFF
c/o PHOENIX TRIMMING CO
2000 NO. RACINE AVE
CHICAGO, ILL. 60614

C. MICHAEL O'SHEA
1516 SO. PROSPECT AVE
PARK RIDGE, ILL. 60068

ARTHUR S. OSTERBURG AND
ALMA M. OSTERBURG
915 - 84th ST
BKLYN., N.Y. 11228

MR J. P. PERGANTES
1444 DUNKIRK RD
MONTREAL 305, QUEBEC, CANADA

HELEN PAPJOHN
685 FORT WASHINGTON AVE
NEW YORK, N.Y. 10040

DON PRICE
P.O. BOX 663
FRD STATION
NEW YORK, N.Y. 10022

A. PONTAN
685 EAST 14th ST
NEW YORK, N.Y. 10009

MARY RODOLICO
386 OCEAN PKWY
BKLYN.,N.Y. 11218

JAMES L. ROSENZWEIG
60 BISHOP ST
NEW HAVEN,CONN.

BERNARD H. ROSENZWEIG
49 WEST 45th ST
NEW YORK,N.Y. 10036

PHILIP RANSOM
267 NORTH STREET
BUFFALO,N.Y. 14201

JACK RUBLIN
425 W. 23 ST
NEW YORK,N.Y. 10011

IRVING ROSENBAUM
101 WEST 30th ST #300
NEW YORK,N.Y.

JOHN F. RICHARDS
7941 SALEM RD
SALEM,MICH. 48175

JACK ROSENBERG
1170 BRIGHTON BEACH AVE
BKLYN.,N.Y. 11235

LILLIAN RUDOMINER
60 PARKWAY DRIVE EAST
EAST ORANGE,N.J. 07017

E. MANVEL RAPPAPORT
2740 GREEN ST
SAN FRANCISCO,CALIF. 94123

GEORGE ROKOS
39-73 RALPH ST
SOUTH SEAFORD, N.Y.

BERNARD ROSENZWEIG
21 CARTHAGE LANE
SCARSDALE,N.Y. 10583

ESTELLE ROSENZWEIG
21 CARTHAGE LANE
SCARSDALE,N.Y.

MURRAY RUBENSTEIN
215 EAST 68th ST
NEW YORK,N.Y. 10021

MILDRED ROSENBAUM
1655 FLATBUSH AVE
BKLYN.,N.Y.

ARTHUR ROSENBAUM
225 BROADWAY
NEW YORK,N.Y.

MR ROBERT W. STODDARD
108 CHERRY AVE
W. SAYVILLE, L.I.,N.Y. 11786

SAYMODE, INC.
43 HALL ST
BKLYN.,N.Y. 11205

VICTOR SAYEGH
59-88th ST
BKLYN.,N.Y. 11209

TONY SANSONE
107- 27th AVE
BKLYN.,N.Y. 11412

ALAN SHAW
75 EVERETT PLACE
PLAINFIELD, N.J. 07063

MORTON SHOR
5 EASTBOURNE DRIVE
SPRING VALLEY, N.Y. 10977

P. SCHONFIELD
377 SO. HARRISON ST
EAST ORANGE, N.J. 07018

JOAN SCHAEFER
107 LE BRUN ROAD
BUFFALO,N.Y. 72415

BERNARD SEGAL
150-6 SO. DREISEN LOOP
BRONX,N.Y. 10475

DR SOL I. STEIN
355 WHITMAN DRIVE
BKLYN.,N.Y.

DAVID SCHLORN
64 BAY 28th ST
BKLYN.,N.Y. 11214

WILLIAM SANTE
6140 CANTERBURY DRIVE G-210
CULVER CITY,CALIF. 90230

MR ROBERT STEVENS
2225 W. 106 ST
CHICAGO,ILL. 60643

GEORGE SPINDLER
29-54 143rd ST
FLUSHING,N.Y. 11354

MR & MRS W. SANTE
1090 CAROLAN AVE. #201
BURLINGAME, CALIF. 94010

DONALD A. STATLAND
10 SO. LA SALLE ST
CHICAGO,ILL.

JOSEPH SCOTTSFAVA, JR.
79 CLAPBOARD RDGE ROAD
DANBURY, CONNECTICUT

BENJAMIN M. SACKS
20 JOHN ST
NEW YORK,N.Y. 10038

TRUSTEES OF LISANNE, INC.
PROFIT SHARING PLAN
43 HALL ST
BKLYN.,N.Y. 11205

TRUSTEES OF SAYMODE,INC.
PROFIT SHARING PLAN
43 HALL ST
BKLYN.,N.Y. 11205

MR ELLIOTT TEPPERMAN
365 E. PENN ST
LONG BEACH, N.Y. 11561

FRIEDA TEPPER
3215 NETHERLAND AVE
BRONX,N.Y. 10463

A.E. TILLMAN
45 SPRAGUE ST
MALDEN, MASS.

MS. T. TREAFTIS
5552 NETHERLAND AVE
RIVERDALE, N.Y. 10471

RICHARD F. VOLPE
19400 RIVERSIDE DR.
BIRMINGHAM, MICH. 48009

PAUL VALENTIN E AND
ANNA VALENTINE
1019 MILE SQUARE ROAD
YONKERS,N.Y. 10704

J.N. VENEMAN
28860 SOUTHFIELD
LATHROP VILLAGE,MICH. 48075

LAWRENCE WEISS
APARTADO 111
SAN MIGUEL DE ALLENDE
GTO,MEXICO

TERRY F. WARMBIR
DONALD E. WARMBIR
3451 NO. CENTRAL AVE
CHICAGO,ILL. 60634

ALFRED WYATT
315 WEST 80 ST
NEW YORK,N.Y. 10024

STEVE WHITE
31 WYNSUM AVE
MERRICK, L.I.,N.Y. 11566

JERRY WEISFOGEL
90-10 149th ST
JAMAICA,N.Y. 11435

GLORIA L. WAYNE
35-80 85th ST
JACKSON HTS., N.Y. 11372

HARRY WIENER
E. 10 ST
,N.Y. 11230

278

#210

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

278

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE A. ENO
MURRAY COHEN
WILLIAM W. GOLUB
ANDREW J. SCHOEN
JACK E. BRONSTON
ABA D. SOKOLOW
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY

SAMUEL I. ROSENMAN
1890-1973

MURRAY HILL 8-7800
AREA CODE 212

CABLE ADDRESS
"ROCOKAY NEWYORK"

TELEX: 12-8748

February 13, 1974

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York 10007

Re: Independent Investor Protective League v. Teleprompter Corp. 73 Civil 4133 (RO)

Dear Judge Owen:

On November 1, 1973, when this case was assigned to Judge Griesa, we served interrogatories on plaintiffs addressed solely to their stockholdings in defendant Teleprompter. On December 11, 1973, at a conference with Judge Griesa, at which the complaint was dismissed with leave to amend, plaintiffs were directed to answer the interrogatories (except that they could note in their answers objections to interrogatories as to plaintiffs' occupations and as to members of Independent Investor Protective League who did not own stock in Teleprompter) so that the answers would be available for any motion defendants might wish to make addresse to the amended complaint. In a letter to Judge Griesa dated January 15, 1974, plaintiffs stated that the answers would be served by February 1, 1974.

After that letter was sent, the case was reassigned to Your Honor. At a conference with Your Honor on January 30, 1974 plaintiffs were again directed to answer the interrogatories and plaintiffs' counsel stated that the answers would be served on February 4 or 5, 1974. Since our time to move to dismiss the amended complaint expires on February 15, 1974, Your Honor stated that we could have reasonable additional time beyond that date to make our motion to dismiss since the answers would not be forthcoming until February 4 or 5.

279

The answers to the interrogatories have still not been served. We accordingly assume, on the basis of the Court's statements on January 30, 1974, that our time to move to dismiss the complaint will be extended beyond February 15, 1974 for a reasonable time after the answers have been served.

Respectfully yours,

Lawrence R. Eno

LRE:mei

cc: I. Walton Bader, Esq.
Defendants' Counsel

30 days after answers served

R.O.

280

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

280

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., Plaintiffs, -against- TELEPROMPTER CORP., et al., Defendants.	CIVIL ACTION 73 Civil 4133 (RO) AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JAMES K. NEVLING, JR., being duly sworn, deposes and says:

1. I am an attorney associated with the law firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co.

2. On Tuesday, July 16, 1974, at approximately 5:15 P.M., I went to the offices of Bader & Bader, attorneys for plaintiffs, at 274 Madison Avenue, New York, New York, where I spoke with I. Walton Bader, Esq., a partner in the firm. In the course of our conversation he stated that he would give a reasonable extension of time to move or answer.

3. On Wednesday or Thursday, July 17 or 18, 1974, I tried to telephone Mr. Bader at his office number (532-6860) with respect to that extension of time. When I dialed

that number, however, I reached an answering service. I asked them to have Mr. Bader call me, and they took my name and telephone number.

4. In the period between Wednesday, July 17, and Tuesday, July 23, 1974, I called Mr. Bader's telephone number (532-6860) at least three more times and left at least two more messages asking him to telephone me and leaving my name and telephone number.

5. In the evening of Tuesday, July 23, 1974, I telephoned Mr. Bader again and spoke to him at his office. In our conversation he agreed to extend the time to move or answer until September 16, 1974.

6. On Wednesday, July 24, 1974, I sent Mr. Bader by hand the original and one copy of a stipulation extending defendants' time to move or answer to September 16, 1974, together with a covering letter. Copies of this stipulation and covering letter are annexed hereto as Exhibit 1. The letter asked Mr. Bader to sign the stipulation and to return it to us either with our messenger or by mail.

7. When I received no response to this letter, I again attempted to reach Mr. Bader by telephone. On Tuesday, July 30, 1974, I spoke to him in the morning by telephone. When I asked about the stipulation, he stated that it was on his desk, and said he had not mailed it because he had expected me to send a messenger to pick it up. I said I

BEST COPY AVAILABLE

would arrange for a messenger to pick it up as soon as possible.

8. On the afternoon of July 30, 1974, I arranged to have a messenger go to the offices of Bader & Bader to pick up the stipulation. At about 3:00 P.M., I received a call from our messenger, who said that he was calling from the offices of Bader & Bader, and that there was nothing there to be picked up. I then spoke with someone who represented herself to be the secretary of Mr. Bader. She stated that the stipulation had been mailed to me. It has not yet been received.

Sworn to before me this
2nd day of August, 1974.

JAMES K. NEVLING, JR.

Notary Public

JOHN A. COAR
Notary Public State of New York
No. 31-0669960
Qualified in New York County
Commission Expires March 30, 1975

283

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

283

SAMUEL I. ROSENMAN
1898-1973

MURRAY HILL 8-7800
AREA CODE 212

CABLE ADDRESS
"ROCOKAY NEWYORK"

TELEX 12-5745

BY HAND

July 24, 1974

I. Walton Bader, Esq.
Bader & Bader,
274 Madison Avenue
New York, New York

Re: IIPL et al. v. Teleprompter Corp. et al.

Dear Mr. Bader:

I am enclosing an original and one copy of a stipulation which extends our time to move or answer to September 16, 1974, pursuant to our conversation of yesterday evening. I would appreciate it if you would sign the original of the stipulation and return it to me either with my messenger or in the enclosed envelope. The copy is for your files.

Thank you for your cooperation in this matter.

Very truly yours,

James K. Nevling, Jr.

JKN/lw
Enclosure

284

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

STIPULATION AND ORDER

73 CIV. 4133 (RO)

IT IS HEREBY STIPULATED AND AGREED that the time of all defendants in this action to answer or to make any motion with regard to the amended complaint is extended to and including September 16, 1974.

Dated: New York, New York
July 24, 1974

BADER & BADER

By _____
A Member of the Firm
Attorneys for plaintiffs

SHEA, GOULD, CLIMENKO & KRAMER

By _____
A Member of the Firm
Attorneys for defendant
Teleprompter Corporation

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

By Lawrence R. Sno
A Member of the Firm
Attorneys for defendant
Touche Ross & Co.

LAWLER, STERLING & KENT

By _____
A Member of the Firm
Attorneys for defendant
Hubert J. Schlafly

SO ORDERED:

_____

U.S.D.J.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL A. SALBERG , being duly sworn, deposes and says that he is not a party to this action and is over 18 years of age. On the 2nd day of August , 1974, deponent served the annexed Notice of Motion upon the following named attorneys at the addresses indicated by depositing true copies thereof enclosed in properly addressed postpaid wrappers in an official depository of the United States Postal Service within the State of New York:

Markewich Rosenhaus Markewich & Friedman, Esqs.
350 Fifth Avenue
New York, New York 10001

Bader & Bader, Esqs.
274 Madison Avenue
New York, New York 10016

Lawler, Sterling & Kent, Esqs.
500 Fifth Avenue
New York, New York 10036

Shea, Gould, Climenko & Kramer, Esqs.
330 Madison Avenue
New York, New York 10017

Michael A. Salberg

Sworn to before me this
5th day of August , 1974

Steven F. Miller

STEVEN F. MILLER
Notary Public, State of New York
No. 31-4501959
Qualified in New York County
Term Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

287

AFFIRMATION IN OPPOSITION TO MOTION TO COMPEL FURTHER ANSWERS TO INTERROGATORIES

I, WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby states the following under penalties of perjury. This document has the force of an Affidavit under the Laws of the State of New York.

It is not believed that the position of the Defendant TOUCHE ROSS & CO., with respect to the objections set forth in its' Motion, is well-taken. In general, Interrogatories addressed to Joint Plaintiffs need be answered by only one Plaintiff.

With respect to the objections to the Answers of the IIPL, it is noted that League supplied a List of its' Membership. It is conceded that this List was not complete.

This list was typed from a card index of Members of the League and, concededly, could have contained some omissions. The Defendant TOUCHE ROSS & CO. concedes that the League need only make its' Membership List available for inspection. The Defendant TOUCHE ROSS & CO. is at liberty to inspect the card index of the Membership of the IIPL, at the Offices of the League 19 West 24th Street, New York, N. Y., upon appropriate notice.

While it is not necessary for the Plaintiffs to individually answer the Interrogatories with respect to stock holdings, in the present form; it is conceded that such Answers could be required by submitting individual Interrogatories to each of the Plaintiffs. The undersigned has written to the Plaintiffs but has not received answers from them. Annexed to this Affirmation is a form letter which has been sent to such Plaintiffs. Accordingly, such information will be supplied with respect to each individual Plaintiff, provided the undersigned is given sixty (60) days from the Date of this Affirmation to comply.

WHEREFORE, the undersigned prays that the Motion be disposed of as set forth in this Affirmation.

Dated: August 15, 1974

I. Walton Bader

CERTIFICATE OF SERVICE

I., I. WALTON BADER, hereby certify as a Member of the Bar of the State of N. Y., under penalties of perjury, that on August 15, 1974, I mailed a copy of the within AFFIRMATION to all of the attorneys affected by same.

I. WALTON BADER.

290

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
AUG 23 1974
S. D. OF N.Y.
290

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

CIVIL ACTION
73 Civil 4138
(RO)
REPLY AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. My office received in the mail this morning (August 16, 1974), the return date of this motion, a so-called Affirmation in Opposition to this motion, which was mailed on August 15, 1974.

2. I. Walton Bader, Esq., one of plaintiff's attorneys, called me on the telephone yesterday. He at that time told me that he would consent to the motion if we agreed to give him another 90 days in which to respond to the Interrogatories. He also then told me that the reason the Interrogatories had not been answered by the individual plaintiffs was because they had not replied to his communications. I told Mr. Bader that I thought it best for the Court to dispose of the motion.

3. There is no substance to the Affirmation in Opposition which, indeed, contains some shocking admissions:

(a) It is admitted that plaintiff Independent Investor Protective League ("IIPL") furnished us with an incorrect Membership List. Mr. Bader says that we "concede" that IIPL need only make its Membership List available for inspection, and suggests that we inspect some index cards to find the members. We made, and make, no such concession, and we should not be required to examine anything. We have already examined IIPL's Membership List. We have shown that it is an unreliable document, and IIPL now so concedes. It should be required to furnish a copy of its Membership List under oath.

(b) Mr. Bader says that it is not necessary for the individual plaintiffs to answer the Interrogatories. This is not so. The Interrogatories were addressed to the individual plaintiffs as well as to IIPL, and called for answers by the individual plaintiffs. Not only does Mr. Bader cite no authority for his proposition, but his present position is contrary to what he told me yesterday, namely, that the reason the Interrogatories had not been answered by the individual plaintiffs was that they had not responded to his communications.

(c) Mr. Bader admits that even now, 9 1/2 months after the Interrogatories were served, he is completely unconcerned as to the stockholdings in Teleprompter of the individual plaintiffs -- an absolute sine qua non to their right to maintain this action. He annexes to his affirmation a "form letter" dated August 15, 1974 which he has sent to the individual plaintiffs to acquire some of that information. That letter, sent 10 days after Mr. Bader

BEST COPY AVAILABLE

received our motion papers, does not even make all the necessary inquiries to respond to the Interrogatories. It is apparent that the individual plaintiffs have completely abandoned their responsibilities as litigants in this Court and that Mr. Bader has not fulfilled his responsibilities as their attorney.

4. Mr. Bader asks for an additional 90 days to submit responses to the Interrogatories. We oppose that request. It has now been 9 1/2 months since the Interrogatories were served, and what Mr. Bader is asking for is one year to respond to simple Interrogatories relating to the plaintiffs' stockholdings in Teleprompter. No reason is given for this extraordinary request. It should have taken, and should take, one day for plaintiffs to supply the required information if they are responsible litigants.

5. It is accordingly requested that our motion be granted in all respects and that plaintiffs be given no more than ten (10) days in which to respond, separately and fully in writing under oath, to the Interrogatories as set forth at p. 12 of the moving affidavit.

Sworn to before me this
16th day of August, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Marlene Herman
Notary Public

MARLENE HERMAN
Notary Public, State of New York
No. 41-6867369
Qualified in Queens County
Commission Expires March 30, 1976

73 CIV 11 4133 (RO)

293

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTORS PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPHONE [illegible] CORP., et al.,

Defendants

ORIGINAL

NOTICE OF MOTION AND AFFIDAVITS

Rosenman Colin Kaye Petschek Freund & Emil

Attorneys for Touche Ross & Co.

575 Madison Avenue
Borough of Manhattan New York City
MUrray Hill 8-7800

Motion granted returnable 8-16-74 as to the corporate defendants only. Time to answer extended to 9-16-74

Robert J. Ward
U.S.D.J.

8/16/74

MICROFILM
AUG 16 1974

73 Civil 4133 (RO)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

ntiffs,

-against-

TELEPROM CORP., et al.,

Defendants

ORIGINAL

NOTICE OF MOTION AND AFFIDAVITS

Rosenman Colin Kaye Petschek Freund & Emil

Attorneys for Touche Ross & Co.

575 Madison Avenue
Borough of Manhattan New York City
MUrray Hill 8-7800

(70)
U.S. DISTRICT COURT
FILED
AUG 16 1974
S.D. OF N.Y.

Motion granted in its entirety and is to be complied with in twenty days time
SO ORDERED
8/16/74
U.S.D.J.

293a

MICROFILM
AUG 16 1974

BEST COPY AVAILABLE

294

U.S. DISTRICT COURT
FILED
SEP 16 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

- -x

73 Civ. 4133 (RO)

ORDER TO SHOW CAUSE

Upon the annexed affidavits of Lawrence R. Eno and James Kelley Nevling, Jr., both sworn to September 13, 1974, and the prior proceedings herein,

Let the plaintiffs show cause before Hon. Richard Owen, U.S.D.J., in Room 2804 of the United States Courthouse, Foley Square, New York, New York at 2:15 P.M. on September 20, 1974, or as soon thereafter as counsel can be heard, (a) for an order, pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure, dismissing the complaint as to each of the plaintiffs, or imposing such other sanctions as the Court shall deem appropriate, by reason of the plaintiffs' failure to comply with the order of this Court of August 16, 1974, and (b) if the complaint not be dismissed as aforesaid, for an order, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, extending defendants' time to answer or make any other motion with respect to the amended complaint until 30 days after plaintiffs have fully responded to Interrogatories dated November 1, 1973 propounded to plaintiffs by defendant Touche Ross & Co. and in any event to October 16, 1974; and for such other

and further relief as to the Court may seem just and proper; and it is further.

ORDERED that defendants' time to answer or otherwise move with respect to the amended complaint be and the same hereby is extended to 10 days after the determination of this motion; and it is further

ORDERED that personal service of this order to show cause, by serving copies thereof and of the papers on which it is based, shall be sufficient if served at or before 5:00 P.M. on September 13, 1974.

Dated: New York, New York
September 13, 1974

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

- -x

73 Civ. 4133 (RO)

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in support of the motion by Touche Ross (a) pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure, for an order dismissing the complaint as to each of the plaintiffs, or imposing such other sanctions as the Court shall deem appropriate, by reason of the plaintiffs' failure to comply with the order of this Court of August 16, 1974, and (b) if the complaint not be dismissed as aforesaid, for an order, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, extending defendants' time to answer or make any other motion with respect to the amended complaint until 30 days after plaintiffs have fully responded to Interrogatories dated November 1, 1973 (the "Interrogatories") propounded to them by Touche Ross, and in any event to October 16, 1974.

Although the Interrogatories were propounded to plaintiffs on November 1, 1973, no answers were received until July 15, 1974, when we received in the mail a purported set of answers dated July 11, 1974 ("the Original Answers"). Despite the fact that it thus took 8 1/2 months for plaintiffs to respond to 11 simple and clear Interrogatories, the Original Answers were in large part unresponsive to the Interrogatories. Of that period of 8 1/2 months, plaintiffs were in default for over 5 months, the Interrogatories having been required by Judge Richard Owen to be answered by February 5, 1974.

On August 2, 1974, Touche Ross moved for an order directing plaintiffs to respond to the Interrogatories that they had not answered. On August 16, 1974, Judge Owen granted that motion in all respects and directed that the further answers be served within 20 days, i.e., by September 5, 1974.

On September 6, 1974, we received in the mail, under postmark of September 5, 1974, what purported to be further answers to the Interrogatories by the plaintiffs. As hereafter shown, these further answers fail substantially to comply with this Court's order of August 16, 1974. Further, it now appears that two of these answers were never made by the persons who purported to have made them, namely, plaintiffs Gary [illegible] and Michael Sugan.

The Interrogatories are addressed almost entirely to the plaintiffs' [illegible] in Teleprompter Corp. ("Teleprompter") and [illegible] their standing to maintain

-2-

this action. The Interrogatories were addressed to all four plaintiffs, namely, Independent Investor Protective League ("IIPL") and the three individual plaintiffs, namely, Gary Michael ("Michael"), Michael Fagan ("Fagan") and Martin F. Randolph, Jr. ("Randolph").

Annexed hereto as Exhibit A is a copy of the amended complaint (the original complaint having been dismissed on December 11, 1973 by Judge Thomas P. Griesa for legal insufficiency); as Exhibit B a copy of the Interrogatories; as Exhibit C a copy of the Original Answers; as Exhibit D those portions of our original motion which discussed the deficiencies in the Original Answers which are still in issue; as Exhibit E our prayer for relief on the original motion which was granted by Judge Owen in toto; as Exhibit F the order of August 16, 1974 of Judge Owen; as Exhibit G the Further Answers of IIPL; as Exhibit H the Further Answers of plaintiff Randolph; as Exhibit I the Further Answers of plaintiff Michael; and as Exhibit J the Further Answers of plaintiff Fagan.

THE COMPLAINT SHOULD BE DISMISSED BECAUSE TWO OF THE PLAINTIFFS DID NOT RESPOND TO THE INTERROGATORIES BY SEPTEMBER 5, 1974 AND A DECEPTIVE DEVICE WAS USED TO MISLEAD DEFENDANTS' COUNSEL TO BELIEVE THAT THEY HAD MADE A TIMELY RESPONSE.

As already noted, on September 6, 1974 we received in the mail, under postmark of September 5, 1974, what purported to be the Further Answers of plaintiffs (Exhibits G-J).

The Further Answers of plaintiff Randolph purported to be executed in California (Exhibit H), the Further Answers

of plaintiff Michael purported to be executed in Vermont (Exhibit I), and the Further Answers of plaintiff Fagan purported to be executed in Connecticut (Exhibit J).

However, in each of those cases, the Jurat was incomplete (the respective Counties not being filled in), there was no indication that any of those plaintiffs had signed and sworn to the answers, the respective dates when the answers were allegedly sworn to were not filled in, and there was no notary public stamp or indication of any notary.

Accordingly, on September 6 and 7, 1974, we wrote to plaintiffs' attorneys pointing out these deficiencies and requesting (a) that the originals of the Further Answers be promptly filed in Court as required by Rule 6(c) of the General Rules of this Court -- which requires such filing within 2 days of service, and (b) that we be furnished with the aforesaid information respecting the Further Answers. Copies of those letters are annexed hereto as Exhibit K.

On September 9, 1974, my office received a telephone message from I. Walton Bader, Esq., one of the plaintiffs' attorneys, stating that he would send us copies of the originals "within the next few days." We immediately on September 9 sent him a letter by hand stating that this was unsatisfacto[illegible] that if the originals had not been filed we were prepare[illegible] examine them that very day; and that if such inspection we[illegible] allowed by the end of the day September 9, or the o[illegible]als were not by then filed in Court, we would assume [illegible] plaintiffs' attorneys did not

have the originals and did not have them on September 5, 1974, when they purported to serve the Further Answers by mailing us copies. A copy of that letter is annexed as Exhibit L.

The inspection of the originals was not permitted by the end of the day September 9, 1974 nor were the originals filed in Court by then.

On September 10, 1974, my office received another cryptic message from Mr. Bader with respect to the originals of the Further Answers. I then called Mr. Bader's office and was told that he was not available. Shortly after leaving word that unless Mr. Bader called me promptly I intended to communicate with the Court, Mr. Bader returned my call. I told Mr. Bader that unless we were permitted to inspect the originals that day, September 10, we intended to communicate with the Court on the subject. Mr. Bader assured me that he had the originals but that he did not know where the originals were in his office and that he might have left them at home. Mr. Bader finally said that he would exhibit the originals at 9:00 A.M. on September 11, 1974 in his office to Mr. Nevling of our firm. We sent a confirming letter by hand on September 10 to Mr. Bader, copy of which letter is annexed, as Exhibit M.

Mr. Nevling appeared at Mr. Bader's office on the morning of September 11, 1974. As appears from Mr. Nevling's attached affidavit, Mr. Bader exhibited the original Further Answers executed by IIPL and Randolph, and he then told Mr. Nevling that he had not received executed Further Answers from either Michael or Fagan.

It thus appears that in the cases of Michael and Fagan, what Mr. Bader sent to us on September 5, 1974 were drafts of proposed further answers by those plaintiffs, and that those drafts were sent to us (and we believe to other counsel) in an effort to mislead us (and them) into believing that those plaintiffs had made timely responses to the Interrogatories as ordered by the Court on August 16, 1974.

There has thus been a failure to comply with the order of August 16, 1974 which directed the service of sworn answers by all plaintiffs by September 5, 1974 and plaintiffs' attorneys have been guilty of a deceptive practice in mailing copies of unsworn drafts to conceal the fact that they had not received sworn answers.

For those reasons, the complaint should be dismissed as to all plaintiffs.

EVEN IF THE COMPLAINT IS NOT DISMISSED FOR THE FOREGOING REASONS, IT SHOULD BE DISMISSED FOR PLAINTIFFS' FAILURE TO COMPLY WITH THE ORDER OF AUGUST 16, 1974 IN OTHER RESPECTS.

Plaintiff TIPL has failed to comply with the Court's order of August 16, 1974 by failing fully to answer Interrogatory 5.

Plaintiff Randolph has failed to comply with said order by failing fully to answer Interrogatory 8.

The unsworn drafts of Further Answers by plaintiffs Michael and Fagan also fail to comply with the Court's order of August 16, 1974. It is unnecessary to consider them at this time because it now appears that those plaintiffs

did not furnish any sworn answers to the Interrogatories.

1

The failure of plaintiff IIPL fully to respond to Interrogatory 5

Interrogatory 4 asked for the names of the members of IIPL who owned any shares of stock of Teleprompter during any portion of the period of time covered by the complaint. In response to Interrogatory 4, the original Answers listed 8 names. In addition to plaintiffs Fagan, Michael and Randolph, they were Robert W. Stoddard ("Stoddard"), John C. Bernius ("Bernius"), Sylvia K. French ("French"), G. Dixon Mahon ("Mahon") and Rose L. Gross ("Gross") (Exhibit C. pp. 2-3). The Further Answers of IIPL list one other name, namely, Sadie Mosner ("Mosner") (Exhibit G, p. 2).

Interrogatory 5 then asked the following (Exhibit B, p. 2:

> "With respect to each member listed in response to Interrogatory 4, state (a)(i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b)(i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c)(i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such sale, and (iii) the price per share received on each such date, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held."

The Original Answer was as follows (Exhibit C, p. 4):

> "The information sought in this Interrogatory is set forth, in detail, in PARAGRAPH 'FOURTH' of the Amended Complaint. The information with respect to Plaintiffs' [sic] RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers."

We defer consideration of plaintiff Randolph until consideration of his Further Answers, and consider here only members of IIPL other than plaintiffs who allegedly owned Teleprompter shares.

Our objection to the Original Answer as to those others was twofold, namely (1) that an answer by cross-reference to paragraph Fourth of the amended complaint was improper, and (2) that even if one were to consider paragraph Fourth, the response would be wholly insufficient (Exhibit D, p. 7).

Thus the amended complaint in paragraph Fourth alleges as follows in pertinent part (Exhibit A, pp. 2-3):

> "FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELEPROMPTER CORP. stock.

DATE OF TRANSACTION	NAME OF MEMBER	SHARES BOUGHT OR SOLD	PURCHASE OR SALES PRICE	NUMBER OF SHARES
		* * * *		
Oct. 1971	ROSE L. GROSS	bought	$583.01	8 (now 32)
May 16,1972	ROSE L. GROSS	bought	$1209.27	33
May 13,1972	ROSE L. GROSS	bought	$594.77	15
Nov.13,1972	ROSE L. GROSS	bought	$791.72	25
Dec.13,1972	ROSE L. GROSS	bought	$366.50	10
Dec.29,1971	SYLVIA K. FRENCH	bought	28 1/2 per share	50
March 24,1972	SYLVIA K. FRENCH	bought	28 1/2 per share	150
Aug.10,1973	JOHN C. BERNIUS	bought	13 1/2 per share	100
Sept.5,1973	ROBERT W. STODDARD	bought	8 1/2 per share	100
Jan.8,1974	G. DIXON MAHON	bought	900 shares $30.205 per share	900
Nov.21,1973	G. DIXON MAHON	sold	$4.125 per share	900 "

We pointed out in our original motion that this listing did not give all the required information. We thus stated

(Exhibit D, p. 7):

> "Moreover, even if one were to consider the cross-reference to paragraph Fourth of the amended complaint, the response would be wholly insufficient for the following reasons:
>
> "(a) As to Gross, French, Bernius and Stoddard, paragraph Fourth only sets forth the dates on which they purportedly bought shares of stock of Teleprompter, the number of shares purchased on each date and the price paid. None of the other information called for by Interrogatory 5 is given, namely, the required information as to sales of Teleprompter stock by such persons, the number of shares presently owned by each such person and the name in which the shares were or are held. Even as to purchases of Teleprompter stock, paragraph Fourth does not show whether there were any purchases other than those listed.
>
> "(b) As to Mahon, paragraph Fourth sets forth the dates on which he purportedly purchased and sold shares of stock of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Mahon (and if so, the required information with respect thereto), the number of shares of Teleprompter presently owned by him or the name in which the shares were or are held by him -- all as required by Interrogatory 5."

The Court then directed "the plaintiff IIPL to respond, separately and fully in writing under oath, to Interrogatory 5..." (Exhibits E and F).

The Further Answers of IIPL as to Interrogatory 5 are as follows in pertinent part (Exhibit G, pp. 3-4):

"NAME OF MEMBER	DATE OF PURCHASE	NO. OF SHARES PURCHASED	PRICE PER SHARE PAID
SADIE MOSNER	Jan.,1973	25	25.00
ROSE L. GROSS	Oct.,1971	8 (now 32)	72.80
"	May 16,1972	33	36.60
"	May 18,1972	50	34.50
G. DIXON MAHON	Jan.15,1973	900	30.205
ROBERT W. STODDARD	Sept.5,1973	100	8.50
JOHN C. BERNIUS	Aug.10,1973	100	13.50
SYLVIA K. FRENCH	March 24,1972	150	28.50
	Dec. 28,1971	50	28.50

* * * *

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
G. DIXON MAHON	Nov.29,1973	900	4.125 "

As can readily be seen, all that IIPL has done is copy into the Further Answers what appears in paragraph Fourth of the amended complaint. It has supplied none of the information which we pointed out was missing from the Original Answers even if said paragraph Fourth were to be considered, and which information the Court ordered IIPL to supply.

Thus, the very same deficiencies as to Gross, French, Bernius [illegible] Stoddard exist in the Further Answers as existed before, and precisely the same deficiencies exist as to the new name that has been added, namely, Mosner); and the very same deficiencies exist as heretofore with respect to Mahon (see supra).

Pursuant to Rule 37(a), these evasive and incomplete answers are to be treated as a failure to answer. Indeed, plaintiff IIPL has simply ignored the Court's order of August 16, 1974 insofar as it applied to Interrogatory 5,

and the complaint should be dismissed as to IIPL.

2

The failure of plaintiff Randolph fully to respond to Interrogatory 8

Interrogatory 8 asked the following (Exhibit B, p.3):

> "With respect to Randolph, state (a)(i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b)(i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c)(i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held."

Randolph did not originally answer Interrogatory 8 at all. The Original Answer was given by IIPL and was as follows (Exhibit C, p. 5):

> "Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH 'FOURTH' of the Amended Complaint."

Here again our objection (in addition to the fact that no answer had been made at all by Randolph) was two-fold, namely (a) that an answer by cross-reference to paragraph Fourth of the amended complaint was improper, and (b) that even if one were to consider paragraph Fourth, the response would be wholly insufficient (Exhibit D, pp. 8-10).

Thus, the amended complaint in paragraph Fourth alleged as follows in pertinent part (Exhibit A, pp. 2-3):

"FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELE-PROMPTER CORP. Stock.

DATE OF TRANSACTION	NAME OF MEMBER	SHARES BOUGHT OR SOLD	PURCHASE OR SALES PRICE	NUMBER OF SHARES
February 1972	MARTIN F. RANDOLPH,JR.	200 bought	9 1/4 per share	200
May 1,1973	MARTIN F. RANDOLPH,JR.	bought	20 1/4 per share	400
August 10, 1973	MARTIN F. RANDOLPH,JR.	sold	13 1/2 per share	400
Sept.5,1973	MARTIN F. RANDOLPH,JR.	sold	9 1/2 per share	400
Nov.12,1973	MARTIN F. RANDOLPH,JR.	sold	4 3/4 per share	200

* * * * *

We pointed out in our original motion that these allegations did not give all the required information. We thus stated (Exhibit D, pp. 9-10):

> "Even if one were to consider the cross-reference, the response would be insufficient. Paragraph Fourth of the Amended Complaint sets forth the dates on which plaintiff Randolph purportedly purchased and sold shares of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Randolph (and if so, the information respecting them), the number of shares of Teleprompter presently owned by him, or the name in which the shares were or are held by him -- all as required by Interrogatory 3."

The Court then directed "the plaintiff Martin F. Randolph Jr. to respond, separately and fully in writing under oath ... to Interrogatory 3" (Exhibits E and F).

BEST COPY AVAILABLE

The Further Answers, now purportedly given by Randolph himself, are as follows (Exhibit H, pp. 2-3):.

"Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8,1973	100	29-7/8
January 15,1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10,1973	400	13-1/2
September 5,1973	400	9-1/2
November 12,1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course."

These Further Answers, as in the case of the Original Answers, do not show whether there were any other purchases and sales by Randolph (a subject of some importance as the following discussion shows); if there were such other purchases and sales, the required information respecting them: the number of shares, if any, of Teleprompter presently owned by him; or the name in which the shares were or are held by him - all as required by Interrogatory 8. Pursuant to Rule 37(a)(3), these evasive and incomplete answers are to be treated as a failure to answer.

There are additional reasons why Randolph has failed to comply with the order of the Court of August 16, 1974, as follows:

1. Randolph says that the information he is giving is a matter of recollection (even as to precise dates) and that he does not have records to support his assertions. He says that he is trying to secure such records, and will subsequently supply them. Randolph has now had almost one year - since November 1, 1973 - to secure such records and to supply the information requested, and he has failed to do so. His answer is in effect a statement that he does not really know when he purchased and sold Teleprompter stock and his Further Answers have simply been asserted in effect "on information and belief", subject to subsequent revision, to prevent a default. His answer is in this respect also incomplete and evasive, and thus to be treated as a failure to answer within the meaning of Rule 37(a)(3).

2. The evasive and worthless character of Randolph's answer is emphasized by the fact that he claims to have purchased 500 shares of Teleprompter stock and to have sold 1,000 shares. There is no explanation of how he came to sell more than he purchased. We also emphasize that Randolph has given a wholly evasive response that must be treated as a nullity under Rule 37(a)(3).

3. We now [illegible] at least two different and conflicting versions of [illegible] purchase and sales of Teleprompter stock. [illegible] complaint alleged that his purchases and sales were as follows (Exhibit A, p.2):

Feb. 1972	bought	200 shares	at	9 1/4 per share
May 1, 1973	bought	400 shares	at	20 1/4 per share
		600		
Aug.10,1973	sold	400 shares	at	13 1/2 per share
Sept.5,1973	sold	400 shares	at	9 1/2 per share
Nov.12,1973	sold	200 shares	at	4 3/4 per share
		1,000		

The Further Answers state that his purchases and sales were as follows (Exhibit H, pp. 2-3):

Feb. 1972	bought	100 shares (originally 25 before stock split)	at	140 3/4 per share
Jan. 8,1973	bought	100 shares	at	29 7/8 per share
Jan.15,1973	bought	200 shares	at	28 3/8 per share
Feb. 1973	bought	200 shares	at	24 1/2 per share
		600		
Aug. 10,1973	sold	400 shares	at	13 1/2 per share
Sept. 5,1973	sold	400 shares	at	9 1/2 per share
Nov. 12,1973	sold	200 shares	at	4 3/4 per share
		1,000		

These various versions of the simple and basic facts relating to Randolph's shareholdings in Teleprompter are irreconcilably conflicting and, as already noted, to be treated as no answers at all under Rule 37(a)(3). Randolph has now had almost a year to supply correct information on these primary facts on which his standing in this Court depends, and it is clear that the complaint should now be dismissed as to him.

THE MOTION FOR AN EXTENSION OF TIME TO ANSWER OR TO MAKE ANY OTHER MOTION WITH RESPECT TO THE AMENDED COMPLAINT SHOULD BE GRANTED

The answers to the Interrogatories were to be available for any motion defendants might wish to make addressed to the amended complaint. Judge Owen accordingly extended

defendants' time to answer or to move to dismiss the amended complaint to 30 days after answers to the Interrogatories were served. When the Original Answers were served, such time was extended by stipulation to September 16, 1974.

Judge Owen on August 16, 1974 found that the Original Answers were insufficient and directed the service of further answers by September 5, 1974. Had proper further answers then been served, no further extension of time to answer or move with respect to the amended complaint would have been necessary. However, as noted above, proper further answers have not been served.

Since Judge Owen has already determined that defendants are entitled to full responses to the Interrogatories in connection with any answer, or any motion addressed to the amended complaint, and that defendants should have 30 days after such responses are received to file such answer or make such motion, the motion for an extension of time for all defendants to answer or move with respect to the amended complaint should be granted.

THE ORDER TO SHOW CAUSE SHOULD BE GRANTED

An order to show cause is requested because defendants' time to answer or move with respect to the amended complaint will expire on September 16, 1974, before the motion can be heard in the ordinary course. An extension of time is therefore sought until [illegible] for the motion so that there will be no default in the interim. There has been no prior application for such [illegible] prior orders and stipula-

tions extending defendants' time have been referred to at pp.15-16 supra.

Sworn to before me this
13th day of September, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7912345
Qualified in New York County
Commission Expires March 30, 1976

313

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Served	3/6/74
RECEIVED	1/7/74
MAILED IN COU.	
A.U.S.	

313

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated membership association, in behalf of its membership affected, MARTIN F. RANDOLPH, Jr. and MICHAEL FAGAN, individually, said parties suing in their own behalf and in behalf of the Classes involved herein similarly situated and circumstanced.

Plaintiffs

against

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAMM, WILLIAM STEGNER, MELVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being fictitious, the parties intended being those persons, firms, corporations, and associations involved in the unlawful acts involved herein.

Defendants

73 CIVIL 4133
TPG

AMENDED COMPLAINT

JURY TRIAL DEMANDED

COUNT ONE

FIRST: Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE is an unincorporated membership organization whose purpose is to protect the rights of security holders. It is a non-profit organization and has its office and place of business at 19 West 24th Street, New York, N.Y.

SECOND: Plaintiff following sets forth a list of the members of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE who are adversely affected by the acts complained of in this complaint.

NAME	ADDRESS
G. Dixon Russell	[illegible] Texas
ROSE L. GROSS	New York, N.Y.

EXHIBIT A

BEST COPY AVAILABLE

NAME OF MEMBER	ADDRESS
MARTIN F. RANDOLPH, Jr.	70 Deer Hill Avenue Danbury Conn.
GARY MICHAEL	Danbury Conn.
MICHAEL FAGAN	Danbury Conn.
ROBERT W. STODDARD	108 Cherry Avenue West Sayville, L.I.
JOHN C. BERNIUS	116 Lincoln Avenue Sayville L.I.
SYLVIA K. FRENCH	1100 Park Avenue New York, N.Y.

THIRD: There may be other members of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE involved in the acts set forth in this Complaint. Said additional members will be brought to the attention of the defendants prior to the trial of this action.

FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELEPROMPTER CORP stock.

DATE OF TRANSACTION	NAME OF [illegible]	[illegible]	PRICE OF SALES	NUMBER OF SHARES
February [illegible]	[illegible] RANDOLPH, JR.	[illegible]	[illegible] per share	200
May 1, 1973	MARTIN F. RANDOLPH JR.	bought	29 1/4 per share	400
August 10, 1973	MARTIN F. RANDOLPH JR.	sold	13 1/2 per share	400
Sept. 5, 1973	MARTIN F. RANDOLPH JR.	SOLD	9 1/2 per share	400
Nov. 12, 1973	MARTIN F. RANDOLPH JR.	SOLD	4 3/4 per share	200
	MICHAEL FAGAN	bought		
	GARY MICHAEL	bought		
Oct. 1971	ROSE L. GROSS	bought	$583.01	6 (now 32)
May 16, 1972	ROSE L. GROSS	bought	$1209.27	23
May 13, 1972	ROSE L. GROSS	bought	$[illegible].77	15

DATE OF TRANSACTION	NAME OF MEMBER	SHARE BOUGHT OR SOLD	PURCHASE OR SALE PRICE	NUMBER OF SHARES
Nov. 13,1972	ROSE L. GROSS	bought	$791.72	25
Dec. 13,1972	ROSE L. GROSS	bought	$366.50	10
Dec. 28,1971	SYLVIA K. FRENCH	bought	28 1/2 per share	50
March 24,1972	SYLVIA K. FRENCH	bought	26 1/2 per share	150
Aug. 10,1973	JOHN C. BERNIUS	bought	13 1/2 per share	100
Sept. 5,1973	ROBERT W. STOBBARD	bought	8 1/2 per share	100
Jan. 8,1973	G. DIXON MAHON	bought	900 shares $30.205 per share	900
Nov. 21,1973	G. DIXON MAHON	sold	$4.125 per share	900

FIFTH: Jurisdiction of this Court to consider this Count is granted pursuant to the Securities Acts of the United States and, in particular, but without limitation as to other sections and laws which may apply, Section 17 of the Securities Act of 1933 (15 USC 77q), Section 22 of the Securities Act of 1933 (15 USC 77v), Section 9 of the Securities Exchange Act of 1934 (15 USC 78i), Section 10(b) of the Securities Exchange Act of 1934 (15 USC 78j(b), Section 14 of the Securities Exchange Act of 1934 (15 USC 78n), Section 16 of the Securities Exchange Act of 1934 (15 USC 78p), Section 20 of the Securities Exchange Act of 1934 (15 USC 78t), and Section 32(b) of the Securities Exchange Act of 1934 (15 USC 78ff).

SIXTH: Defendant [illegible] is, on information and belief, a [illegible] having its principal place of business at 50 West [illegible], New York, N.Y.

SEVENTH: Defendant [illegible] & COMPANY is, on information and belief, a partnership having an office and place of business at 1633 Broadway, New York, N.Y.

EIGHTH: Defendants HERBERT SCHLAFLY, WILLIAM BRESNAN and MARVYN CARTON are, on information and belief, officers, directors, or persons in control of the defendant TELEPROMPTER CORPORATION who have participated in the unlawful acts involved herein and are thus personally liable therefor.

NINTH: Prior to the purchase of the stock involved herein by all of the members of the Class involved, the earliest date of purchase alleged herein being December 28, 1971 the defendant TELEPROMPTER CORPORATION made a number of false and misleading statements in various published material. All of such false and misleading statements are not presently in the possession of the plaintiffs but all will be supplied prior to the trial of this action and subsequent to full examination of the defendants. However the following specific false and misleading statements are alleged herein. The specific allegations made in this complaint shall be set forth in order with the earliest misrepresentations set forth first.

1- In the 1969 annual report of TELEPROMPTER CORPORATION the cost of services, and other expenses are set forth at $10,035,454. This figure is false and the costs involved are considerably greater. The defendant, wrongfully, has capitalized various current expenses, and, in particular, the capitalization of pre-operating expenses and development costs and then, after a system becomes operational, amortizing said costs over a ten year period. These costs are current expenses and should have been set forth as such. Such proper costing would have given a far smaller earnings picture and thus the price of the stock would have been less.

2- In various reports filed with the Securities and Exchange Commission, and, in particular, the 10K report for the

year ended December 31, 1970, the proxy statement submitted with respect to the annual meeting to be held May 21, 1970, the proxy statement submitted with the Notice of Annual Meeting of Shareholders of October 7, 1971, and the 10K report with respect to the fiscal year ending Dec. 31, 1972 the defendant again sets forth various earnings figures which are false and misleading and higher than justified by the facts, again based upon the wrongful capitalization of current expenses.

3- In various reports filed with the Securities and Exchange Commission, and in public statements, false and misleading figures with respect to the number of subscribers and miles of distribution system and cable laid have been false and misleading. Specifically, but without prejudice to the showing of other instances of these facts, the proxy statement with respect to the annual meeting of May 21, 1970 contains a statement, on page 27, that the number of primary subscribers of the defendant were at least 122,940 in 1969 with an additional 3,293 subscribers, 18,458 subscribers and 20,124 subscribers involved in systems which were previously under construction. In the 10K report for the fiscal year ending December 31, 1972 on pages 16, 17, 18 and 19 there are purportedly detailed reports of the number of subscribers in each of the various systems, the miles of distribution systems, etc. These reports are also false and misleading.

4- The said defendant FELLOWSHIP CORPORATION, on information and belief, has carried subscribers who have cancelled their contracts with said defendant as active subscribers and has failed to remove said cancelled subscribers from the records of said corporation thus giving the public a totally false and misleading picture of the business of the said corporation.

5- The number of miles of cable purportedly laid

and belief, misstated. The actual number of miles of such cable actually laid is substantially less than reported by said corporation.

TENTH: The aforesaid financial irregularities have, on information and belief, appeared in various financial statements which have been certified by the defendant TOUCHE ROSS & COMPANY thereby making said defendant liable for damages involved.

ELEVENTH: On information and belief the defendant TELEPROMPTER CORPORATION has been guilty of various other irregularities. The details of these irregularities are not specifically known to the plaintiffs as specifics at the present time but further information on these irregularities will be obtained after an inspection of the books and records of the said defendant TELEPROMPTER CORPORATION will be had and an examination on the records of the Securities and Exchange Commission with respect to the carrying on of business of TELEPROMPTER CORPORATION can be examined. However there have been widespread allegations made that there has been substantial fraud in the construction program of the said TELEPROMPTER CORPORATION and this allegation is made in addition to the specific allegation made hereinabove that the actual number of miles of cable laid by the said defendant TELEPROMPTER CORPORATION does not accord with the published figures.

TWELFTH: This action is a class action and the following set forth the relevant Class Action allegations.

A. The Class involved are purchasers of the stock of the defendant TELEPROMPTER CORPORATION from April 2nd, 1971 to present. The plaintiffs herein are members of the PROTECTIVE LEAGUE and are members of said Class.

b- The number of members of this Class are not known with certainty but are believed to number at least One Hundred Thousand persons, firms, corporations and/or associations.

c- The Class is too numerous to be individually joined in this action.

d- This Class Action suit is brought under Rules 23(a), 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure.

e- The representative parties are competent to represent the class. One of the parties, the INDEPENDENT INVESTOR PROTECTIVE LEAGUE is a voluntary organization having no "axes to grind" making said organization a superior Class Representative.

f- A Class Action is a superior method of resolving this controversy since the issues of fact and law involved in this suit are common to the class and predominate over any issues of fact involving individual actions.

g- Litigation involving the issues herein is already concentrated in this forum and the [illegible] pitalization of current expenses are involved herein in the criminal suits pending in this court. The issues in the instant suit are subject to construction fraud, false reports as to the number of subscribers, and false reports with respect to the [illegible] are limited to this specific action [illegible] other issues.

[illegible] by reason of the acts alleged to the plaintiffs and the Class have sustained, [illegible] substantial losses. A reference to the [illegible] purchases of shares at prices as high as $[illegible] per share and as low as $4.125 per share. The purchases [illegible] would not have been made at these high figures had the facts [illegible] the matters alleged

Exhibit B

BEST COPY AVAILABLE

in this Complaint been known or, alternatively, the market price of the shares of TELEPROMPTER CORPORATION would have been substantially less.

COUNT TWO

FOURTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","SIXTH", "SEVENTH","EIGHTH","NINTH","TENTH","ELEVENTH","TWELFTH" and "THIRTEENTH" for the foregoing Complaint as though fully set forth at length herein.

FIFTEENTH: Jurisdiction of this Count is given specifically by the Securities Acts, in particular Section 10(b) thereof and Rule 10b-5 of the Rules of the Securities and Exchange Commission.

SIXTEENTH: The specific reference to the sole sections is being made herein since the allegations made are definitive of deceptive and misleading practices with respect to the purchase and sale of securities.

COUNT THREE

SEVENTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","SIXTH", "SEVENTH","EIGHTH","NINTH","TENTH","ELEVENTH","TWELFTH" and "THIRTEENTH" for the foregoing Complaint as though fully set forth at length herein.

EIGHTEENTH: This Court has jurisdiction of this Count since it is a substantial and related claim to the Counts for Securities Act violations and thus this Court has pendent jurisdiction thereof pursuant to the principles of "pendent jurisdiction".

NINETEENTH: This is a Count for common-law fraud and deceit against the defendants herein based upon the facts alleged herein.

WHEREFORE PLAINTIFFS DEMAND:

1- Damages against the defendants, jointly and severally, in behalf of the Class involved, in an amount sufficient to compensate them for their losses involved, said amount believed to be in the sum of Ten Million ($10,000,000) Dollars.

2- The aforesaid damages to be assessed in connection with each Count of the Complaint

I.Walton Bader
General Counsel
INDEPENDENT INVESTOR PROTECTIVE
LEAGUE.

BADER and BADER
Attorneys for Plaintiffs
2/4 [illegible] Avenue
[illegible]
[illegible] (532)-6500

CERTIFICATE OF SERVICE

I, I.WALTON BADER, an attorney of the Bar of the State of New York, under penalties of perjury pursuant to the provisions of the New York CPLR, hereby certify that on January 3rd, 1978, I mailed a copy of the foregoing Amended Complaint to Messrs. [illegible],O'BRIAN,etc. Attorneys for the defendant [illegible] Inc., to Messrs. ROSENMAN,COLIN, etc., attorneys for [illegible] & COMPANY and to Messrs. [illegible], attorneys for the defendant HOWARD J. SCHLAFLY.

I. Walton Bader

BEST COPY AVAILABLE

322

SERVED	6/7/73
RECEIVED	
FILED IN COURT	7/9/73
D & E	SFm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

Civil Action
73 Civil 4133
(TPG)

322

INTERROGATORIES

INTERROGATORIES TO PLAINTIFFS
(FIRST SET)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant Touche, Ross & Co., by its attorneys, Rosenman Colin Kaye Petschek Freund & Emil, hereby propounds the following Interrogatories to plaintiffs, to be answered within thirty (30) days after service hereof, under oath and in writing, by each of the individual plaintiffs and by plaintiff Independent Investor Protective League by an officer or duly authorized agent thereof.

The Interrogatories are as follows:

1. State (a)-(i) the date when and (ii) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether there are any articles of association or similar documents of IIPL, and if so (c) all of the places where the same may be found.

2. State the names and addresses of the members of IIPL.

3. State (a) the names and addresses of the (i) offi-

EXHIBIT D

cers, (ii) executives, and (iii) employees of IIPL and (b) the positions occupied by each of them.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per

share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

11. (a) State whether ITPL at any time owned any shares of Teleprompter, and if so, state (b) (i) the date when it furst purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (c) (i) the date of each subsequent purchase by it of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (d) (i) the date of each sale by it of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Dated: New York, New York
November 3, 1971

Yours, etc.,

DEWEY BALLANTINE BUSBY PALMER & WOOD

By

Attorneys for Plaintiffs
140 Broadway
New York, New York 10005
(212) 708-1000

BADER & BADER, ESQS.
Attorneys for plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

OFFICE OF THE GENERAL COUNSEL
Securities and Exchange Commission
Washington, D.C. 20549

327

SERVED	7/13
RECEIVED	7/15/77
FILED IN COURT	
D & E	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

327

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
77 Civil 4133
JUDGE OWEN

ANSWERS

PLAINTIFFS' ANSWERS TO INTERROGATORIES OF THE DEFENDANT [illegible] & Co.

Plaintiffs answering the interrogatories of the Defendant TOUCHE, [illegible] & Co. state, as follows:

All information set forth herein is from the files of the IIPL.

1. State (a) (i) the date on which (ii) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether it was incorporated or operated as a partnership or similar business, and if so (i) all of the places where the business was [illegible].

(a) (i) The IIPL is a non-profit membership association organized in [illegible] (ii) [illegible]

(b) [illegible] for inspection at the office of IIPL, [illegible], New York, N. Y. 10010.

EXHIBIT C

2. State the names and addresses of the members of IIPL.

Answer: The IIPL has hundreds of Members. A Membership List is available at the offices of the IIPL, 19 West 24th Street, New York, N. Y. and will be shown, on request.

3. State (a) the names and addresses of the (i) officers, (ii) executives, and (iii) employees of IIPL, and (b) the positions occupied by each of them.

Answer: The following are the Officers of the IIPL with their respective addresses:

Richard [illegible] Gordon, President
19 West 24th Street
New York, N. Y. 10010

Charles J. Lillis, Vice President
19 West 24th Street
New York, N. Y. 10010

Darrill [illegible], Secretary
Pritton Hill Road
Brookfield Center, Connecticut

The Directors of the League are the Officers. There are no other employees.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: Michael Foran
Watson Lane
Danbury, Connecticut

Gary Michael
100 Chalet Village
Stockbridge, Vermont

Martin F. Randolph, Jr.
70 Deer Hill Avenue
Danbury, Connecticut

Robert W. Stoddard
100 Cherry Avenue
West Sayville, Long Island

John C. Bernius
116 Lincoln Avenue
Sayville, Long Island

Sylvia K. French
1100 Park Avenue
New York, N. Y.

G. Dixon [illegible]
[illegible]
Ozone, Texas

[illegible] L. [illegible]
[illegible] Wright [illegible]th Street
[illegible]klyn, N. Y.

5. With respect to persons listed in response to Interrogatory 4, state (a) (i) the date on which each such person first purchased shares of stock of Telephone, (ii) the number of shares so purchased on that date, and (iii) the price per share paid by each such person. (b) (i) the date of each subsequent purchase of shares of Telephone stock by each such person, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase. (c) (i) the date of each sale by each such person of

shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

Answer: The information sought in this interrogatory is set forth, in detail, in PARAGRAPH "FOURTH" of the Amended Complaint. The information with respect to Plaintiffs' RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers.

5. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answers: The addresses of these parties have been previously furnished. The undersigned does not have information in his files with respect to the occupations of these Plaintiffs, at the present time.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the

price per share paid for said shares, (b) (I) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such date, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH "FOURTH" of the Amended Complaint.

9. With respect to Michael, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) (I) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of

shares of Teleprompter presently owned by him, and (c) in each instance the name in which the shares were or are held.

Answer: The following sets forth the required information with respect to the Plaintiff MICHAEL:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	100	$30.00

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following information is submitted with respect to the Plaintiff Fagan:

Date of Purchase	[illegible]	Price Per Share Paid
March 10, 1972	[illegible]	$30-1/2

11. (a) State whether IIPL at any time owned any shares of Teleprompter, and if so, state (b) (i) the date when it first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (c) (i) the date of each subsequent purchase by it of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (d) (i) the date of each sale by it of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Answer: The IIPL does not own any stock in TELEPROMPTER nor has it ever owned any such stock. However, its' raison d'otre is the protection of investors against discriminatory and predatory practices.

Dated: June 11, 1974

Yours, etc.

[redacted] CAGER
Attorneys for Plaintiffs

By: [redacted]
[redacted]
270 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6060.

BEST COPY AVAILABLE

BEST COPY AVAILABLE

TO: All the Attorneys
for the Defendants

VERIFICATION

STATE OF : NEW YORK)
) ss.:
COUNTY OF : NEW YORK

RICHARD A. GORDON being duly sworn, deposes and says that he is the President of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same are true to his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes them to be true.

SWORN TO BEFORE ME

Richard A. Gordon

THIS 11th DAY OF
July
June, 1974.

Notary Public.

CERTIFICATE OF SERVICE

I, I. Walton Bader, an attorney at law of the State of New York, pursuant to C.P.L.R., a duly certify that on June 11, 1974, I mailed a copy of the within [illegible] to all the attorneys for the Defendants, by depositing same in the mail-chute at 274 Madison Avenue, New York, N.Y. 10016.

I. Walton Bader

2

Interrogatory 4 asked for the names of the members of IIPL who owned any shares of stock of Teleprompter during any portion of the period of time covered by the complaint. In response to Interrogatory 4, the Answers list 8 names. In addition to plaintiffs Fagan, Michael and Randolph, they are Robert W. Stoddard ("Stoddard"), John C. Bernius ("Bernius"), Sylvia K. French ("French"), G. Dixon Mahon ("Mahon"), and Rose L. Gross ("Gross").

EXHIBIT D

Interrogatory 5 then asked the following, and received the following response:

> "5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The information sought in this Interrogatory is set forth, in detail, in PARAGRAPH "FOURTH" of the Amended Complaint. The information with respect to Plaintiffs' RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers."

We defer consideration of plaintiffs Fagan, Michael and Randolph until discussion of the Interrogatories where the information with respect to them purports to be given, and corsider here only the other members of IIPL who allegedly owned Teleprompter shares.

The first objection to the response as to them is that it is made simply by a cross-reference to the allegations of paragraph Fourth of the amended complaint. The memorandum of law submitted by us with this motion demonstrates that an interrogatory may not be answered by cross-reference to another document, particularly to a pleading. For this reason alone, IIPL should be directed to serve a proper response to this Interrogatory as required by Rule 33(a).

reference to paragraph Fourth of the amended complaint the response would be wholly insufficient for the following reasons:

(a) As to Gross, French, Bernius and Stoddard, paragraph Fourth only sets forth the dates on which they purportedly bought shares of stock of Teleprompter, the number of shares purchased on each date and the price paid. None of the other information called for by Interrogatory 5 is given, namely, the required information as to sales of Teleprompter stock by such persons, the number of shares presently owned by each such person and the name in which the shares were or are held. Even as to purchases of Teleprompter stock, paragraph Fourth does not show whether there were any purchases other than those listed.

(b) As to Mahon, paragraph Fourth sets forth the dates on which he purportedly purchased and sold shares of stock of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Mahon (and if so, the required information with respect thereto), the number of shares of Teleprompter presently owned by him or the name in which the shares were or are held by him -- all as required by Interrogatory 5.

Accordingly, the Court should direct a response to Interrogatory 5, first because the cross-reference to the complaint does not constitute a response and, second, even if the cross-reference were taken into account, the res-

338

was is insufficient.

4

Interrogatory 8 asked the following and received the following response:

Exhibit E Exhibit F Exhibit G Exhibit H

Exhibit I Exhibit J Exhibit K Exhibit L Exhibit M

"8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH "FOURTH" of the Amended Complaint."

Here again, as shown by the accompanying memorandum of law, the purported response is wholly insufficient by virtue of its cross-reference to the amended complaint. For this reason alone, a response by plaintiff Randolph should be directed by the Court. In addition, the response is not made by the plaintiff Randolph himself as required by the Interrogatories and Rule 33. The response on its face sets forth only information claimed to be known by IIPL.

Even if one were to consider the cross-reference, the response would be insufficient. Paragraph Fourth of the Amended Complaint sets forth the dates on which plaintiff Randolph allegedly purchased and sold shares of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales

by Randolph (and if so, the information respecting shares the number of shares of Teleprompter presently owned by him, or the name in which the shares were or are held by him -- all as required by Interrogatory 8.

interrogatory to by plaintiff Fagan should be answered as required by Rule 33(a).

CONCLUSION

For the foregoing reasons, the following relief is requested:

1. That the Court direct the plaintiff Martin F. Randolph Jr. to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 8.

2. That the Court direct the plaintiff Gary Michael to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 9.

3. That the Court direct the plaintiff Michael Fagan to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 10.

4. That the Court direct the plaintiff LIPL to respond, separately and fully in writing under oath, to Interrogatory 5 and to Interrogatory 2 by annexing a list of the names and addresses of the members of LIPL.

Sworn to before me this
2nd day of April, 1974.

[illegible]

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants

ORIGINAL

NOTICE OF MOTION AND AFFIDAVITS

342

Rosenman Colin Kaye Petschek Freund & Emil

Attorneys for Touche Ross & Co.

575 Madison Avenue
Borough of Manhattan New York City
MUrray Hill 8-7300

FILED
AUG 16 1974
S. D. OF N. Y.

Motion granted in its entirety and is to be complied with in twenty days from
SO ORDERED
8/16/74

U.S.C.J.

MICROFILM
AUG 16 1974

OFFICE COPY

EXHIBIT F

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

343

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 Civil 4133
(RO)

----------x

FURTHER ANSWERS TO FIRST INTERROGATORIES OF THE DEFENDANT TOUCHE, ROSS & CO.

The following further Answers are submitted to the First Interrogatories of the Defendant TOUCHE, ROSS & CO. These Answers are alleged on information and belief and are based upon the records kept by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE:

2. State the names and addresses of the members of the IIPL.

Answer: The IIPL keeps a list of its' Members on a set of index cards. Submitted with the Answers to these Interrogatories are photocopies of the Index cards showing

EXHIBIT G

the Names and Addresses of the present Members of the IIPL.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: In addition to the Names and Addresses previously given, the following Name and Address is to be added:

SADIE MOSNER

3133 Brighton 7th Street

Brooklyn, N. Y. 11235

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by

each such member, and (e) in each instance the name in which the shares were or are held.

Answer: (See below)

NAME OF MEMBER	DATE OF PURCHASE	NO. OF SHARES PURCHASED	PRICE PER SHARE PAID
SADIE MOSNER	Jan., 1973	25	25.00
ROSE L. GROSS	Oct., 1971	8 (now 32)	72.80
"	May 16, 1972	33	36.60
"	May 13, 1972	50	34.50
G. DIXON MAHON	Jan. 15, 1973	900	30.205
ROBERT W. STODDARD	Sept.5, 1973	100	8.50
JOHN C. BERNIUS	Aug.10, 1973	100	13.50
SYLVIA K. FRENCH	March 24, 1972	150	28.50
	Dec. 28, 1971	50	28.50
MICHAEL FAGAN	March 10, 1972	50	29-7/8
GARY MICHAEL	April 1, 1972	100	30.00
MARTIN F. RANDOLPH, JR.	Feb., 1972	25 (now 100)	140-3/4
	Jan. 8, 1973	100	29-7/8
	Jan. 15, 1973	200	28-3/8
	Feb., 1973	200	24-1/2

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
MARTIN F. RANDOLPH, JR.	Aug. 10, 1973	400	13-1/2
	Sept. 5, 1973	400	9-1/2
	Nov. 12, 1973	200	4-3/4
G. DIXON MAHON	Nov. 29, 1973	900	4.125

Dated: September 5, 1974

Yours, etc.

BADER and BADER
Attorneys for the Plaintiffs

TO: ALL OF THE ATTORNEYS AFFECTED BY SAME

By: _____
I. Walton Bader

274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-0860

V E R I F I C A T I O N :

STATE OF: NEW YORK)
) ss.:
COUNTY OF: NEW YORK)

MERRILL SANDS, being duly sworn, deposes and says that he is the Secretary of the Independent Investor Protective League, an Unincorporated Association; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

_____
Merrill Sands

SWORN TO BEFORE ME

THIS _____DAY OF

SEPTEMBER, 1974.

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on September 5, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

348

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs, -against- TELEPROMPTER CORP., ET AL., Defendants.	CIVIL ACTION 73 CIVIL 4133 (RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

EXHIBIT H

BEST COPY AVAILABLE

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (each = 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1[illegible]	100	29-7/8
January 15, 197[illegible]	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information: 350.

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Marton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-0000

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF: _____)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

_____
Martin F. Randolph, Jr.

SWORN TO BEFORE ME
THIS _____ DAY
OF _____, 1974.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on _____ _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs, -against- TELEPROMPTER CORP., ET AL., Defendants.	CIVIL ACTION 73 CIVIL 4133 (RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is 100 Chalet Village, Stockbridge Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

EXHIBIT I

set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) (I) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
April 1, 19[illegible]	100	30

Dated: August 2[illegible], 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____

I. Burton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-[illegible]

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: VERMONT.)
) ss.:
COUNTY OF: _____)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS _____ DAY OF
_____, 1974.

_____
Gary Michael

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

355

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MICHAEL FAGAN

The Plaintiff MICHAEL FAGAN submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is Watson Lane, Danbury, Connecticut 06810. I am a conductor, employed by the Penn Central Railroad.

7. State whether any of Randolph, Michael and

EXHIBIT J

Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed above.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	50	29-7/8

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Pltfs.

By: _____

I. [illegible]
27[illegible] Avenue
New York, N. Y. 1001[illegible]
Telephone: (212) [illegible]

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

V E R I F I C A T I O N

STATE OF: CONNECTICUT)
) ss.:
COUNTY OF: _____)

MICHAEL FAGAN, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE M.

THIS _____DAY OF

_____, 1974.

_____
Michael Fagan

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the Attorneys for the Defendants.

_____
I. Walton Bader

358

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MALL. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1896-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

September 6, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received in the mail, under postmark of September 5, 1974, what purport to be answers to Touche Ross' interrogatories by plaintiffs. Would you please advise whether the original answers have been filed in Court as required by Rule 6(c) of the General Rules of the Court. If not, we request that the originals be filed immediately.

The copies of the purported answers we received are incomplete in the following respects:

Michael Fagan. Nothing indicates whether you as attorney signed the answers or whether Mr. Fagan individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Connecticut is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Fagan signed the answers, (b) whether Mr. Fagan swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

EXHIBIT K

I. Walton Bader, Esq.

September 6, 1974

Martin F. Randolph, Jr. Nothing indicates whether you as attorney signed the answers or whether Mr. Randolph individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in California is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Randolph signed the answers, (b) whether Mr. Randolph swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

Gary Michael. Nothing indicates whether you as attorney signed the answers or whether Mr. Michael individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Vermont is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Michael signed the answers, (b) whether Mr. Michael swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

IIPL. While there is an indication that Mr. Sands swore to these answers, there is nothing to indicate whether you did so, or when Mr. Sands swore to the answers or the name of the notary before whom he did so. Would you please therefore supply this information.

The foregoing does not relate to any substantive objections that we may have to the answers but simply to the question of whether the answers were properly executed by the plaintiffs, if they were executed at all.

Yours very truly,

Lawrence R. Eno

LAWRENCE R. ENO

LRE/SGS

cc: All Counsel

360

COPY

RCKPF&E

DATE 9/11
MAILED BY RRE
DELIVERED BY
AT A.M.
There must be no exception to this rule.

360

September 7, 1974

I. Walton Bader, Esq.
Bader & Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League et al. v. Telaprompter et al.

Dear Mr. Bader:

In my letter of September 6, 1974, there is an error on page 2 insofar as IIPL is concerned. The inquiry respecting you should be whether you signed the answers rather than swore to them.

Yours very truly,

LAWRENCE R. ENO

LRE/rn

92310-018

361

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH E. COLIN
MAX FREUND
SIDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM N. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
LEON L. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT J. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE D. BUTTENWIESER
EUGENE L. VOGEL
GERALD ALPIN
MALL L. BARASCH
H. PAUL RICHMAN
EDWARD H. COHEN
FLORA GOLDHALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1888-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5748

361

BY HAND

September 9, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Telepromoter Co. et al.

Dear Mr. Bader:

We today received a telephone message from you in response to my letters of September 5 and 7 in which you say that you will send us copies of the original interrogatory answers "within the next few days." This is unsatisfactory to us. Mr. Leviing is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 5(c) of the General Rules of the Court, we shall assume that you do not have the originals, and did not have them on September 5, 1974, and shall proceed accordingly.

Yours very truly,

LRE/EMN

cc: All Counsel

BEST COPY AVAILABLE

362

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

SAMUEL I. ROSENMAN
1888-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-8748

BY HAND

September 10, 1974

362

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League
v. Teleprompter

Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Hevling of our office [illegible] purported further answers of [illegible] Randolph, Jr., Gary Mitchell and [illegible], as well as the original [illegible].

Please be further advised that we are contacting Judge Owen to request [illegible] the matter of these answers [illegible] exhibited to us at that time and place.

Very truly yours,

Lawrence R. Hevling

LRE/mk

cc: All Counsel

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

73 Civ. 4133 (RO)

363

AFFIDAVIT

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JAMES K. NEVLING, JR., being duly sworn, deposes and says:

I am an attorney associated with the law firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross").

On September 11, 1974, I went to the offices of Bader & Bader, attorneys for plaintiffs, in order to examine the signed originals of each plaintiff's further answers to the Interrogatories. I there met with I. Walton Bader, Esq., a member of the firm, at about 9:10 A.M. on September 11. At that time he showed me a ribbon copy of the further interrogatory answers of plaintiff Independent Investor Protective League, which appeared to have been signed and sworn to by one Merrill Sands before Mr. Bader himself as notary public. He also showed me the ribbon copy of the further answers of plaintiff Martin F. Randolph, Jr., which appeared to have been signed by Mr. Randolph before a notary public in San Diego County, California. (A copy of the signed ribbon copy of the further answers of plaintiff

Randolph, as provided to me by Mr. Bader at that time, is annexed heretc as Exhibit 1; a copy of the signature page of the signed ribbon copy of the further answers of plaintiff Independent Investor Protective League is annexed hereto as Exhibit 2. From the fact that these signed ribbon copies were present in the offices of Bader & Bader on September 11, 1974, it was evident that they had not yet been filed with the Court.

When I asked to see the further interrogatory answers of the remaining plaintiffs (Michael Fagan and Gary Michael), Mr. Bader stated that he would explain about the further answers of those plaintiffs. He handed me a notice of motion returnable September 20, 1974 to which was attached an affirmation signed by Mr. Bader. In the affirmation Mr. Bader represented that:

> "I have not yet received answers from the defendants [sic] FAGAN or MICHAEL.... I would expect that these answers will be received momentarily. However, since they have not and the time has passed for compliance with the Order of this Court...."

At no time while I was in his office on September 11, 1974 did Mr. Bader show me or offer to show me a signed copy of the further interrogatory answers of either Michael Fagan or Gary Michael.

At the same time that he handed me the notice of motion and affirmation, Mr. Bader also delivered to me a notice of taking testimony and a set of interrogatories, both addressed to Touche Ross. Mr. Bader threatened that he would not give any extensions of time to Touche Ross, either

to answer or move with respect to the complaint, to answer plaintiffs' motion or interrogatories, or to produce witnesses for deposition, and that he expected strict compliance with his various discovery devices. He said that these strictures applied only to Touche Ross, and that other defendants would be granted extensions of time on request. He suggested, however, that if Touche Ross would give him additional time to provide further answers to the Interrogatories, he would adjourn the various discovery proceedings until determination of the validity of the complaint, and also offered to give us additional time to answer or move.

JAMES K. NEVLING, JR.

Sworn to before me this

13 day of September, 1974.

Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-[illegible]345
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs, - against - TELEPROMPTER CORP., ET AL., Defendants.	CIVIL ACTION 73 CIVIL 4133 (RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

EXHIBIT 1

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase. (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1973	100	23-7/8
January 15, 1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF: SAN DIEGO)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Martin F. Randolph, Jr.

SWORN TO BEFORE ME
THIS 23rd DAY
OF July, 1974.

OFFICIAL SEAL
DIANE McCREEDY
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Comm. Expires Mar. 22, 1976

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on September 19th, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
MARTIN F. RANDOLPH, JR.	Aug. 10, 1973	400	13-1/2
	Sept. 5, 1973	400	9-1/2
	Nov. 12, 1973	200	4-3/4
G. DIXON MAHON	Nov. 29, 1973	900	4.125

Dated: September 5, 1974

Yours, etc.

BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader

274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860

TO: ALL OF THE ATTORNEYS AFFECTED BY SAME

V E R I F I C A T I O N :

STATE OF: NEW YORK)
) ss.:
COUNTY OF: NEW YORK)

MERRILL SANDS, being duly sworn, deposes and says that he is the Secretary of the Independent Investor Protective League, an Unincorporated Association; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

_____
Merrill Sands

SWORN TO BEFORE ME
THIS 5th DAY OF
SEPTEMBER, 1974.

EXHIBIT 2

_____
NOTARY PUBLIC.

I. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-[illegible]
in New York County
[illegible] 30, 19[illegible]

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on September 5, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

372

73 Civ. 4133 (RO)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants

372

ORIGINAL

ORDER TO SHOW CAUSE AND AFFIDAVITS

Rosenman Colin Kaye Petschek Freund & Emil

Attorneys for defendant Touche Ross & Co.

575 Madison Avenue

Borough of Manhattan New York City

MUrray Hill 8-7800

9/16/74

Mail Maurice Bernard

BY HAND

BY

LAWLER, STERLING & KENT
500 FIFTH AVENUE
NEW YORK, N.Y. 10036

Copy received 9/16/74
S. Barry Maurice

373

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIDAVIT OF I.WALTON BADER

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document constitutes an affidavit under the Laws of the State of New York.

I am one of the attorneys for the plaintiffs herein and am General Counsel of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE, I am fully familiar with the facts and circumstances of this action having been in charge thereof since its inception.

I submit that the motion to strike the Complaint (apparently made only by the defendant TOUCHE ROSS & COMPANY, is not proper and should be denied. There has been no default in compliance with orders of this Court.

374

At the outset, however, I wish to point out that it is clear that great difficulties are going to be involved in this important and complicated case, with respect to discovery matters. I would expect, in view of the present position of the defendant TOUCHE ROSS & COMPANY, that there will be repeated discovery motions, document production requests, motions to vacate requests, deposition rulings, etc. The present set of motions, which, in my opinion, are completely unnecessary when experienced counsel are involved on both sides and which should have been disposed of by stipulation, indicate the large volume of paperwork on discovery matters that will be involved. Accordingly the undersigned suggests that this case be assigned permanently to a United States Magistrate to superintend all discovery matters. This is generally the practice of this Court in similar cases. For example, Judge Frankel assigned two actions pending in this Court, INDEPENDENT INVESTOR PROTECTIVE LEAGUE vs. AVCO CORPORATION et. al. Civil Action 74 Civil 731 and INDEPENDENT INVESTOR PROTECTIVE LEAGUE vs. HORNBLOWER & WEEKS, HEMPHILL NOYES et. al. , Civil Action 74 Civil 1802 to Magistrate Goettel for all pre-trial discovery purposes. The undersigned believes that both sides in these complicated and substantial actions are pleased with this procedure.

The Court is also advised that the answers to interrogatories of the plaintiff MICHAEL have been now received, served, and filed. This only leaves outstanding the answers of the plaintiff FAGAN. FAGAN, of course, is not necessary to the prosecution of this case but, understandably, the undersigned does not wish to be accused of failing to protect FAGAN's rights.

375

The undersigned will not, at this time, go into the reasons for the service of unverified interrogatory answers upon the attorneys for the defendant TOUCHE ROSS & COMPANY (although such answers were not served upon the attorneys for the other defendants until answers of the plaintiff RANDOLPH were served on September 10th, 1974. Since the attorneys for the other defendants make no objection to the service we need only consider the facts with respect to the defendant TOUCHE ROSS & COMPANY.

The said defendant admits to (1) service of answers to interrogatories by the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and plaintiff RANDOLPH on September 6th, 1974. (Since the Court's order was entered on August 16th, 1974 but notice thereof was given by mail on that date three additional days are granted for compliance (Rule 6(e) FRCP). Thus the time for compliance with the order of this Court would expire on September 6th, 1974 and at that time service of the answers of the plaintiffs INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH had already been made. In addition, of course, the demand made by the defendant TOUCHE ROSS & COMPANY to see the original documents excused the failure to file the original documents before September 11th, 1974 and further constituted, in effect, a stipulation for extension until September 11th, 1974.

Thus the failure to submit answers of the plaintiffs MICHAEL and FAGAN are subject to the motion made on September 11th, 1974 for extension of time and the Court has power to grant such relief under Rule 6(b) FRCP.

376

We now come to the claim by the defendant TOUCHE ROSS & COMPANY that the answers supplied are "insufficient" because the answers do not state that these are "all sales" or "all purchases" and that there seems to be some error in the RANDOLPH answers. If answers to interrogatories are incorrect, of course, a party can make the appropriate capital of this fact at the trial of the action. However the error is understandable since RANDOLPH did not have his order confirmations. This he now has and this problem is cleared up.

The answers by the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE are correct as stated and further answers are not required. Sales information, other than with respect to the plaintiff RANDOLPH was not given because, insofar as the League is concerned, there were no other sales with respect to his stock. Sales information was given with respect to the member MAHON was, of course, given. As to the names in which the stock was held this, of course, is obvious from the record. Also, if the stock involved is held in "street names" and the members are merely the beneficial owners this would be immaterial to the issues of this suit.

WHEREFORE the undersigned prays that the plaintiffs' motion be granted and the defendant TOUCHE ROSS & COMPANY's motion be denied.

Dated : September 18th, 1974

I. Walton Bader

377

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs, - against - TELEPROMPTER CORP., et al., Defendants.	73 Civ. 4133 (RO) SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION BY DEFENDANT TOUCHE ROSS & CO. TO DISMISS THE AMENDED COMPLAINT PURSUANT TO RULE 37

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. I submit this affidavit to supplement my moving affidavit of September 13, 1974 on the motion of defendant Touche Ross & Co. ("Touche Ross") to dismiss the amended complaint pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure.

2. As my moving affidavit shows, plaintiffs' attorneys, on September 5, 1974, served by mail unsigned and unsworn answers to Touche Ross' Interrogatories by the individual plaintiffs. On September 11, 1974, plaintiffs' attorneys exhibited to us a signed original answer of plaintiff Martin F. Randolph, Jr. ("Randolph") sworn to September 3, 1974. We assumed that such answer had been in the possession of plaintiffs' attorneys on September 5, 1974 and that the only default was in sending to us an unconformed copy -- a default we were willing to overlook. Accordingly, in my moving affidavit, I dealt with Randolph's answers as though they had been timely, but were unresponsive.

378

It now appears from a letter to the Court dated September 11, 1974 (received by us September 13, 1974) sent by one of plaintiff's attorneys, I. Walton Bader, Esq., that Randolph's signed and sworn answers may not have been in the possession of plaintiff's attorneys on September 5, 1974 and there is no proof that they were. A copy of that letter is annexed hereto.

In the letter of September 11, 1974, Mr. Bader says that after he left his office the afternoon of September 5, 1974 to go to St. Louis, he was told on that day that during his absence Randolph's sworn answers had arrived. It does not appear by whom he was so informed. Mr. Bader also says that he was in St. Louis on September 6 and September 7 (and apparently was not in his office on Sunday, September 8, since he says he first learned of our September 6 letter on September 9), that he was in Washington, D. C. on September 9 and out on depositions on September 10 until about 6:00 P.M., when he returned to his office.

If Mr. Bader's statements are correct, then the earliest that Mr. Bader could have seen Randolph's sworn answers was at 6:00 P.M. on September 10, 1974. Indeed, Mr. Bader claims in his letter (incorrectly) that on September 9 and September 10, he told my office that he was still awaiting receipt of the sworn answers, including Randolph's.

There is no proof whatsoever that Randolph's sworn answers were received by September 5, 1974, and accordingly

379

on this motion he is to be treated in the same category as plaintiffs Michael and Fagan. As we also show in the moving affidavit, even if this were not the case the amended complaint should be dismissed as to Randolph because his answers were unresponsive, evasive, incomplete and conflicting.

Plaintiffs have moved to open the default with respect to Michael and Fagan. That motion will be heard simultaneously with the instant motion. Our papers opposing plaintiffs' motion will contain further analysis and refutation of Mr. Bader's letter of September 11, 1974 which we request also be considered on the instant motion. It may, however, be noted that in an affirmation dated September 11, 1974 on plaintiffs' said motion, Mr. Bader, while claiming to have made timely service of the answers of IIPL, makes no such claim with respect to the answers of Randolph.

Lawrence R. Eno

Lawrence R. Eno

Sworn to before me this

14th day of September, 1974.

Steven F. Miller

Notary Public

STEVEN F. MILLER
Notary Public, State of New York
No. 31-4501959
Qualified in New York County
Term Expires March 30, 1975

DR MAXIMILIAN BADER
DR. I WALTON BADER
MILTON BADER

September 11th, 1974

Re: Independent Investor Protective League
vs. Teleprompter et. al. Civil Action
73 Civil 4133 R.O.

Hon. Richard Owen
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y.

Dear Judge Owen,

I am replying to the letter of September 11th, 1974 of the attorneys for the defendant Touche Ross & Company with respect to the filing of answers to interrogatories with respect to Your Honor's Order. I am accused of attempting to mislead the attorneys for this defendant into believing that there had been full compliance with Your Honor's Order. This, of course, is not correct. If there has been any irregularity involved it has been inadvertent and, in any event, there has been no prejudice to the defendant involved.

There is pending, before Your Honor, returnable September 20th, 1974, a motion to extend time for compliance with Your Honor's order to permit me to receive signed copies of the interrogatories of Messrs. Michael and Fagan. The motion involved sets forth all of the relevant circumstances. I expect that, by the time this motion is heard, I shall have received the signed answers to interrogatories.

The facts involved are as follows:

On September 5th, 1974 I had Mr. Merrill Sands, the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE sign the answers to interrogatories: I further instructed My

Secretary to send copies of the answers to interrogatories executed by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE to all attorneys for the defendants. I inspected these before they went out, they were properly conformed and there is no question that they were served in time. There does not seem to be any complaint with respect to these answers.

In the afternoon of September 5th, 1974 I had to leave the office for St. Louis Missouri. I prepared, before I left, copies of the answers to interrogatories which I intended to mail and to conform as soon as I returned from St. Louis Missouri.

By inadvertence, on September 5th, 1974 apparently a set of the unconformed answers to interrogatories were sent to the attorneys for TOUCHE ROSS (but were not sent to the other attorneys). Meanwhile I was told on September 5th, 1974 during my absence from the office that the answers to the interrogatories by RANDOLPH had arrived.

On September 6th, 1974 a letter was sent to me by the attorneys for TOUCHE ROSS. I did not personally receive it since I was out of the office. I was told about the receipt of the letter on September 9th, 1974 (but not the contents) and believing that Mr. Eno was referring to the answers of RANDOLPH, FAGAN & MICHAEL I told his office that I hoped to receive the signed copies of those interrogatories and would be mailing them in a few days. I again told his office on September 10th, 1974 that I hoped to receive the signed copies of the original documents in a few days. I point out that I was out of the office in Washington DC on September 9th, St. Louis on September 6th and 7th, and on depositions on September 10th 1974.

I returned to the office on September 10th, 1974 at about 6PM. In the meantime I had told Mr. Eno personally that he could inspect the answers to interrogatories on September 11th, 1974 at 9 AM. As I looked at the file on September 10th, 1974 I saw the envelope to the ROSENMAN COLIN firm missing therefrom and also saw the letters to me of said firm. Now, for the first time, I realized what had happened.

Obviously it was futile to request time extensions in view of the conversation of September 10th with Mr. Eno. I therefore prepared a motion addressed to Your Honor. I also prepared discovery applications etc. This was done between 5AM and 9AM on September 11th

1974.

At 9AM I met with Mr. Nevling and showed him the original answers of INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH. I also gave him a photo-copy of the RANDOLPH answers and he admitted service on the origiral. I also gave him discovery papers and plaintiff's motion for an extension of time.

At 10:45 I filed all of the papers involved in this Court.

The situation thus is as follows:

a- The answers to the interrogatories, as ordered by the Court, in the case of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH have been filed. There is a Rule 6(d) motion pending for a time extension with respect to MICHAEL and FAGAN.

b- There obviously was no attempt to mislead. The attorneys for the defendants are in communication with one another and, since only one attorney received the papers there obviously was an inadvertence in sending these.

c- There is a pending motion for extension of time for FAGAN and MICHAEL. The Court may either grant or deny it.

d- Even if FAGAN and MICHAEL were eliminated from this case it would make no difference since there are many other League members who can serve as Class Representatives.

The matter seems to be the conventional "tempest in a teapot" or conversely a "red herring". Mr. Eno does not tell the Court that I had offered to grant any extensions of time that he might require in this case until receipt of the answers of FAGAN and MICHAEL. Indeed I have been most generous in granting term extensions. I even have agreed to stay plaintiffs' discovery in this case until the defendants can make a motion directed to the sufficiency of the Complaint. I repeat my offer to grant any necessary term extensions to permit the defendants to study the interrogatory answers as received in order to permit the appropriate motions to be made.

I am prepared to meet with the Court at any convenient time if the Court feels that this is necessary.

IWB/cf
cc All Defendants Attorneys

Respectfully

I. Walton Bader

73 Civ. 4133 (RO)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR
PROTECTIVE LEAGUE, et al.,

Plaintiffs,

- against -

TELEPROMPTER CORP., et al.,

Defendants.

ORIGINAL

SUPPLEMENTAL AFFIDAVIT IN
SUPPORT OF MOTION

Rosenman Colin Kaye Petschek Freund & Emil

Attorneys for Defendant
Touche Ross & Co.

575 Madison Avenue
Borough of Manhattan **New York City**
MUrray Hill 8-7800

COPY RECEIVED
SEP 16 PM 12:11
BY HAND
MAIL
BY

9/16/74

Copy Received
9/16/74

LAWLER, STERLING & KENT
500 FIFTH AVENUE
NEW YORK, N.Y. 10036

Copy received 9/16/74

DISTRICT COURT
SEP 10
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
et. al.

Plaintiffs

Civil Action
73 Civil 4133 RO

against

TELEPROMPTER CORPORATION et. al.

Defendants

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affirmation of I.WALTON BADER, dated September 11th, 1974 and the exhibits annexed hereto the undersigned will move this Court, before HON. RICHARD OWEN, United States District Judge, at a Motion Part thereof, to be held at the Courthouse, Foley Square, New York, N.Y. on Friday September 20th, 1974 at 2:15 O'clock in the afternoon, for an Order extending the time for compliance with the Order of this Court directing further answers to interrogatories on the part of tne plaintiffs MICHAEL FAGAN and GARY MICHAEL for a period of thirty (30) days and for such other further and different relief as this Court may deem just and proper.

Dated : September 11th, 1974

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York NY 10016

To: Defendants' attorneys.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

385

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

Civil Action
73 Civil 4133 RO

against

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIRMATION IN SUPPORT OF MOTION

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury.

I am one of the attorneys for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

This Court has heretofore directed the service of further answers to interrogatories within twenty(20) days from the date of the Order of the Court.

In compliance with the Court's order the undersigned prepared answers with respect to the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE, served said answers on the attorneys for all defendants within the time allowed, which answers are believed to be in full compliance with the order of the Court.

In connection with the plaintiffs RANDOLPH, FAGAN and MICHAEL I requested information from them, received their replies as annexed hereto, and prepared answers to be verified by said parties. I received answers from the plaintiff RANDOLPH and have served same upon the defendants' attorneys.

I have not yet received answers from the defendants FAGAN or MICHAEL. I have prepared proposed answers based upon the information received from them. I would expect that these answers will be received momentarily. However, since they have not and the time has passed for compliance w ith the Order of this Court, I respectfully request that additional time be given to prevent prejudice upon said defendants.

I cannot tell the reason for the delay. I have sent these documents to my clients in sufficient time for them to be returned. I would expect that, within the next few days, I will receive them. I have written to the said parties and requesting return of the documents immediately.

WHEREFORE the undersigned prays that this Motion be in all respects granted/

Dated :September 11th, 1974

I.Walton Bader

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
274 MADISON AVENUE
NEW YORK, N.Y. 10016
889-8313

August 15, 1974

OFFICE OF THE GENERAL COUNSEL

Mr. Gary Michael
100 Chalet Village
Stockbridge, Vermont

Dear Mr. Michael:

As you know, the litigation with respect to TELEPROMPTER CORP. has been moving along. In order to properly protect your rights, it will be necessary for me to file a Statement, under oath, setting forth the following information:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN? 100
2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME? MINE NAME
3. WHEN DID YOU BUY THE SHARES? 4/1/72
4. HOW MUCH DID YOU PAY FOR THE SHARES? 30.00 a share
5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES? NO
6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM? NO
7. WHAT IS YOUR PRESENT OCCUPATION? LAW STUDENT

TELEPROMPTER CORP. is attempting to do everything that it can to harass and annoy us and prevent vindication of our rights.

Unless I receive this information within the next TEN DAYS, there might be serious consequences with respect to your claim. Therefore, would you please treat this as URGENT.

Sincerely,
INDEPENDENT INVESTOR PROTECTIVE LEAGUE

J. Walton Bader, General Counsel

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
274 MADISON AVENUE
NEW YORK N Y 10016
889-5313

August 15, 1974

OFFICE OF THE GENERAL COUNSEL

Mr. Michael Fagan
Watson Lane
Danbury, Conn. 06810

Dear Mr. Fagan:

As you know, the litigation with respect to TELEPROMPTER CORP. has been moving along. In order to properly protect your rights, it will be necessary for me to file a Statement, under oath, setting forth the following information:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN? 50
2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME? MICHAEL P. FA
3. WHEN DID YOU BUY THE SHARES? Trade date 3/10/72 Payment date 4/4/72
4. HOW MUCH DID YOU PAY FOR THE SHARES? $1,523.66 Price 29 7/8
5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES? No.
6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM?
7. WHAT IS YOUR PRESENT OCCUPATION? Penn Central Railroad Conduc

TELEPROMPTER CORP. is attempting to do everything that it can to harass and annoy us and prevent vindication of our rights.

Unless I receive this information within the next TEN DAYS, there might be serious consequences with respect to your claim. Therefore, would you please treat this as URGENT.

Sincerely,
INDEPENDENT INVESTOR PROTECTIVE LEAGUE

[illegible] Watson Bader, General Counsel

388a

LEXINGTON 2-6860
6861

CABLE ADDRESS "BAPATENTS" NEW YORK
TELEX ITT 424014

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

3884

September 10th, 1974

Re: Teleprompter Corporation

Mr. Michael Fagan
Watson Lane
Danbury Conn. 06810

Mr. Gary Michael
100 Chalet Village
Stockbridge Vermont

Gentlemen,

I have not yet received the answers to interrogatories which I sent to you almost two weeks ago.

The time for answers has now expired and we have a serious risk of the Court dismissing this action as far as you are concerned.

May I ask for Immediate return of the documents.

Very truly yours,

IWB/fg

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

389-

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs, -against- TELEPROMPTER CORP., ET AL., Defendants.	CIVIL ACTION 73 CIVIL 4133 (RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is ~~100 Chalet Village, Stockbridge,~~ LOWER CHRISTIAN HILL R.D. RFD #1 BETHEL VT. 05032 Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

BEST COPY AVAILABLE

set forth in response to interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972 ~~April 1, 1972~~	100	30

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____

I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-6860

391

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: ~~VERMONT~~ Connecticut)
) ss.:
COUNTY OF: Fairfield)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Gary Michael
Gary Michael

SWORN TO BEFORE ME
THIS 16th DAY OF
September, 1974.

Anna M Meyer
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on September 18th, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader
I. Walton Bader.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

392

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,	73 Civ. 4133 (RO)
Plaintiffs,	REPLY AFFIDAVIT ON MOTION OF TOUCHE ROSS & CO. TO DISMISS THE COMPLAINT
-against-	
TELEPROMPTER CORP. et al.,	SUR-REPLY AFFIDAVIT ON PLAINTIFFS' MOTION FOR EXTENSION OF TIME
Defendants.	

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

This affidavit is submitted in answer to the affirmation of I. Walton Bader, Esq. dated September 18, 1974 and the affidavit of Merrill R. Sands dated September 17, 1974, both of which were received by us on September 19, 1974. The affirmation and the affidavit are apparently submitted both on plaintiffs' motion for an extension of time with respect to plaintiffs Fagan and Michael and on Touche Ross' motion under Rule 37 to dismiss the complaint.

FACTS COMMON TO BOTH MOTIONS

In our moving affidavits on Touche Ross' Rule 37 motion, and in our answering affidavit on plaintiffs' motion for an extension of time, we demonstrated that plaintiffs' attorneys had resorted to a deceitful device to lead us to believe that the individual plaintiffs had answered the Interrogatories by September 5, 1974, the time provided by the Court's order

of August 16, 1974; that thereafter they failed to file the originals in Court although such filing was demanded, and frustrated our attempts at inspection of the originals (evidently hoping that in the interval the answers would be received); that finally on September 11, 1974 they were compelled to permit the inspection by our statement that otherwise we would bring the matter to the immediate attention of the Court; that they then were forced to admit that they had never received signed and sworn answers from Fagan and Michael; and that in a letter to the Court on September 11, 1974 plaintiffs' attorneys made deliberate misstatements to the Court.

Mr. Bader, the attorney involved, has submitted no affidavit or affirmation with respect to these various matters. In his September 18 affirmation, he expressly says (p.3), "The undersigned will not, at this time, go into the reasons for the service of unverified interrogatory answers upon the attorneys for the defendant Touche Ross & Co...." Instead, Mr. Bader submits the affidavit of Mr. Sands, allegedly the Secretary and a Director of IIPL. Mr. Sands says that late in the day of September 5, 1974 he visited Mr. Bader's office; saw there the executed answers of Randolph which had arrived there late that day; "assumed" that he could send out "copies thereof"; and then through "inadvertence" mailed "a set of unsigned answers to interrogatories."

If Mr. Sands was the one who mailed the purported copies

of the answers of the individual plaintiffs, the claim of "inadvertence" cannot be sustained. Thus:

(a) On Friday, September 6, 1974 we wrote to Mr. Bader, pointing out that the copies of the answers of Fagan, Michael and Randolph that we had received were unsigned and unsworn, demanding that the originals be immediately filed and requesting information as to the execution of the originals (Exhibit K*). At 9:15 A.M. on Monday, September 9, Mr. Bader left a message in my office that he had received that letter and would send "photocopies of original Interrogatory answers within next few days" (see affidavit of Rosalind Rosen annexed to answering affidavit on plaintiffs' motion). Mr. Bader did not then say that he did not have the originals, or some of them, or that the copies had been "inadvertently" sent, but instead, by saying that he would send "photocopies of the original Interrogatory answers", reinforced the impression that he sought to create that he had the originals and would forward proof of that fact by sending photocopies.

(b) On that same day, September 9, 1974, shortly after receiving the aforesaid message, we sent a hand-delivered letter to Mr. Bader stating that unless he filed or permitted inspection of the originals by the end of that day, we would assume that he did not have them on September 5 (Exhibit L). At 9:25 A.M. on September 10, 1974, in response to that letter, my office received another telephone message from Mr. Bader, again stating that he would be send-

---

*Reference to Exhibits are, unless otherwise indicated, to those annexed to the moving affidavit on Touche Ross' Rule 37 motion.

ing "photocopies of the original answers" (see affidavit of Muriel Kresh annexed to answering affidavit on plaintiffs' motion). Again he did not say that he did not have originals or that the copies had been sent "inadvertently", but yet again reinforced the impression sought to be created that he had the originals and would forward proof by sending photocopies.

(c) On September 10, 1974, I personally spoke to Mr. Bader (that conversation is detailed in my answering affidavit on plaintiffs' motion). I told Mr. Bader that I wanted immediately to inspect all the original answers. He said that he had the originals and "you can take my word for it." At no time in that conversation did he say that he did not have all the originals or that the unsworn copies had been sent "inadvertently". As appears from Mr. Nevling's annexed affidavit, when Mr. Bader finally told him on September 11 that he did not have the originals of the answers of Michael and Fagan, he did not tell Mr. Nevling that the copies had been sent "inadvertently".

FACTS WITH RESPECT TO PLAINTIFFS' MOTION FOR AN EXTENSION OF TIME

One can examine Mr. Bader's affirmation and Mr. Sands' affidavit in vain for any showing of "excusable neglect" in the failure of Fagan and Michael to serve timely answers pursuant to the order of August 16, 1974. Indeed, if Mr. Sands' affidavit is to be credited, the reason plaintiffs did not obey Judge Owen's direction that the Interrogatories be answered by February 5, 1974, and made no effort in that

direction for over 5 months, was because Mr. Sands "determined that the League [IIPL] should not go ahead with an active role in this action until the SEC investigation [of Teleprompter] was concluded"! One can hardly imagine a more deliberate defiance of a Court order. Further, Mr. Sand' statements have nothing to do with the failure of Fagan and Michael to serve timely responses pursuant to the further order of August 16, 1974.

Mr. Sands says that Mr. Bader told him he had an "'open ended' stipulation" with defendants extending defendants' time to answer or move with respect to the complaint until the interrogatories were served. Even if this were so, it would have nothing to do with this situation. Further, the statements are not correct. Judge Owen by order extended defendants' time to answer or move until 30 days after the Interrogatories were answered -- and they still have not been.

Mr. Bader and Mr. Sands say that Michael's answers (but not Fagan's) have been received and filed -- as though that ends the matter. Of course, it does not. Those answers are dated September 16, 1974. No leave to serve those late answers has been given and none should be given. There has been no showing of "excusable neglect" and no compliance with the requirements of Rule 6(b) FRCP, as shown by our answering affidavit on plaintiffs' motion and our accompanying memorandum of law.

There are further reasons why no leave to serve Michael's answers should be given. Thus:

(a) These answers are in effect unsworn answers. While Michael says that his only address is in Vermont, the answers purport to be sworn to in Connecticut. A name is signed in the space for a notary, but there is no indication that the person is a notary. There is no notary's stamp, no indication of a commission, no County Clerk's certificate attesting to the notary's authority. There is thus nothing to show that these are sworn answers. Further, Rule 15 of the Civil Rules of this Court provides that, where specific provision is not made with respect to a procedural question in the Federal statutes or rules (and analogies thereto cannot be found), the Court may apply the procedure previously followed by federal courts in equity or the procedure prevailing in the Supreme Court of the State of New York. We know of no provisions in, or analogies that may be made to, any Federal statutes or rules respecting verifications outside the State of New York. However, New York Civil Practice Law and Rules §§2309(c) provides that an out-of-state oath can be accepted only if accompanied by a certificate that would entitle a deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath. Michael's purported answers dated September 18 do not conform to these requirements.

(b) Michael's answers are not responsive to the Interrogatories in a number of respects. For example, it shows only one purchase of stock and states that the stock so purchased has not been sold. It does not set forth whether

there were other purchases and sales (and, if so, the required information with respect thereto) and it does not set forth the name in which the shares were or are held -- all as required by Interrogatory 9 addressed to Michael.

Mr. Bader engages in his affirmation (p.3) in an exegesis to demonstrate that Fagan's and Michael's answers were not due until September 11, 1974, when plaintiffs made their motion for an extension of time. There is no substance to those contentions. Judge Owen on August 16, 1974 orally directed in Mr. Bader's presence that the answers be served within 20 days, i.e., by September 5 and so endorsed the motion papers at that time. Mr. Bader contends that, because notice of the order was sent by mail, that gave him three extra days. There is no such rule. Mr. Bader knows there is no such rule because he purported to mail the answers September 5, the 20th day after August 16. Then Mr. Bader states that our demand to see the originals (which he did not have) "constituted, in effect,a stipulation" extending the time to September 11, the day he was forced to permit the inspection. We do not think such a contention warrants an answer. It is inconceivable that a demand that originals (which were non-existent) be filed or an immediate inspection be permitted to determine whether the answers had been timely served "constituted, in effect, a stipulation" extending plaintiffs' time for any purpose.

FACTS WITH RESPECT TO TOUCHE ROSS' RULE 37 MOTION TO DISMISS

There is no need to deal further with Fagan or Michael,

who failed to file timely answers.

Randolph

Mr. Bader says in his affirmation (p. 3) that we admit that Randolph's answers were served on September 6 (sic). We admit no such thing. We admit only that on September 5 there were mailed to us unsigned and unsworn copies of what purported to be answers of Randolph (Exhibit H). In our supplemental affidavit on the motion to dismiss, we showed that there was no proof that Randolph's signed and sworn answers were in Mr. Bader's possession on September 5 and there is every reason to believe they were not. We there also showed that Mr. Bader's letter of September 11 to the Court indicated that he claimed not to have seen Randolph's answers until September 10. That was the day he served them (see Exhibit 1 to Mr. Nevling's affidavit, part of the moving papers on the motion to dismiss).

Now comes Mr. Sands to say that Randolph's answers arrived in Mr. Bader's office "late in the day" of September 5. We question that statement as we before questioned other statements of Mr. Sands. There is no reasonable explanation why, if Randolph's signed and sworn answers were received on September 5, they were not served that day and were not served until the evening of September 10 and were not filed until September 11, 1974. We have every reason to believe that unsigned and unsworn copies of Randolph's purported answers were mailed to us on September 5, together with such copies of Fagan's and Ishael's purported answers, to

deceive us as to Randolph as we were to be deceived as to Fagan and Michael.

We have also showed on the motion to dismiss (moving affidavit, pp. 11-14) that even if Randolph's answers be considered timely, he has failed to answer the Interrogatories as directed by the Court and the motion to dismiss should be granted as to him.

Mr. Bader's affirmation and Mr. Sands' affidavit simply add further reasons why the motion to dismiss as to Randolph should be granted. That affirmation and affidavit state that Randolph's sworn answers are incorrect. Among the grounds that we advanced for dismissal as to Randolph was that his answers are incomplete, that they are evasive, and that they are conflicting. We showed in the moving affidavit and in our memorandum of law that such answers constitute a "failure to answer" under Rule 37(a)(3), and that such a failure to answer mandates dismissal.

Mr. Sands now annexes to his affidavit what purport to be Randolph's records as to his purchases and sales. These confirm that his sworn answers are incomplete (not including a substantial number of his purchases and sales, the number of shares, if any, of Teleprompter presently owned by him, or the name in which the shares were or are held by him), evasive, and conflicting (we now have three different versions of Randolph's alleged stockholdings). Mr. Bader states (p. 3) that "there seems to be some error

in the Randolph answers" and suggests that we should "make appropriate capital of this fact at the trial of this action Mr. Sands says (p.3), "There is some variance between these [Randolph's] confirmations and the information supplied in the answers to interrogatories of Randolph.... If they are inaccurate the defendants are at liberty to make any application to the Court that they so desire."

We have made that application -- the motion to dismiss under Rules 37(b) and (d). As our memorandum shows, that is the appropriate remedy when answers to interrogatories are incomplete and evasive; for in truth such answers are no answers at all.

The confirmation by Messrs. Bader and Sands of the fact that Randolph's sworn answers, given after the Interrogatories were outstanding over 10 months, are in fact what we claim them to be, mandates dismissal as to him.

IIPL

We demonstrated in the moving affidavit (pp. 7-11) that the complaint should be dismissed as to IIPL because it has ignored the order of the Court of August 16, 1974. On the motion under Rule 37(a) leading to that order, we showed that the IIPL's original answers failed to respond to Interrogatory 5, and the Court ordered IIPL to respond thereto "separately and fully." However, all that IIPL did in the Further Answers were in substance to repeat its prior answers, and supplied none of the missing information which the Court ordered it to supply.

This is not denied by either Mr. Bader or Mr. Sands. All they say is that the information given is all that is shown by IIPL's files. As our memorandum of law shows, this is no excuse. IIPL said the same thing on the Rule 37(a) motion, but the Court ordered it to supply the information. Our memorandum shows that IIPL was required to make reasonable efforts to secure the information from its members, and that, if it failed to do so, dismissal is warranted. IIPL admittedly made no such efforts. Its present answers are in substance no different from its original answers. IIPL has ignored the order of the Court, and the complaint should be dismissed as to it.

OTHER MATTERS

Mr. Bader says that he anticipates discovery difficulties and asks that the matter be referred to a Magistrate. This subject should not be considered until the motion to dismiss is decided. If that motion is granted, there will be no discovery. The matters dealt with on the pending motions are serious; they are more than "discovery" matters. They should be dealt with by the Court directly.

Sworn to before me this
20th day of September, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7912764
Qualified in New York County
Commission Expires March 30, 1976

This is not denied by either Mr. Bader or Mr. Sands. All they say is that the information given is all that is shown by IIPL's files. As our memorandum of law shows, this is no excuse. IIPL said the same thing on the Rule 37(a) motion, but the Court ordered it to supply the information. Our memorandum shows that IIPL was required to make reasonable efforts to secure the information from its members, and that, if it failed to do so, dismissal is warranted. IIPL admittedly made no such efforts. Its present answers are in substance no different from its original answers. IIPL has ignored the order of the Court, and the complaint should be dismissed as to it.

OTHER MATTERS

Mr. Bader says that he anticipates discovery difficulties and asks that the matter be referred to a Magistrate. This subject should not be considered until the motion to dismiss is decided. If that motion is granted, there will be no discovery. The matters dealt with on the pending motions are serious; they are more than "discovery" matters. They should be dealt with by the Court directly.

Sworn to before me this
20th day of September, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Notary Public

EVELYN MESSINA
NOTARY PUBLIC, State of New York
No. 31-7912345
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

73 CIV. 4133(RO)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JAMES K. NEVLING, JR., being duly sworn, deposes and says:

In my affidavit of September 13, 1974, which is part of Touche Ross's Rule 37 motion to dismiss, I set forth the substance of my conversation with Mr. Bader in his office on the morning of September 11, 1974. In that conversation, Mr. Bader did not tell me that the unsigned and unsworn copies of the answers of the individual plaintiffs had been mailed to our firm through inadvertence.

James K. Nevling, Jr.

Sworn to before me this
20th day of September, 1974.

ARNOLD L. ROTH
NOTARY PUBLIC, State of New York
No. 60-8672740 Qualified in Westchester Co.
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

73 CIV. 4133(RO)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JAMES K. NEVLING, JR., being duly sworn deposes and says:

I am a resident of the State of New York, am over eighteen years of age and am not a party to this action.

On September 13, 1974 I served the annexed order to show cause and the papers on which it is based on plaintiffs' attorneys at their offices at 274 Madison Avenue, New York, New York at about 3:30 P.M. by leaving a true copy thereof in a conspicuous place in said offices as follows:

When I arrived at those offices at about 2:50 P.M., the only person present in the outer room of said offices was Ms. Dorothy Blacker, who informed me that she would not accept or acknowledge service of the order to show cause. She denied that she had any connection with the firm of Bader & Bader or with I. Walton Bader, Esq., the only member of the firm who has been involved in this action to my knowledge, and denied that she was authorized to accept service of process in their behalf. In response to my questions Ms. Blacker stated that neither I. Walton Bader nor anyone else connected with the firm of Bader & Bader was present in the offices. I independently verified this statement.

I waited at the offices until 3:30 P.M. but no one 406
connected with the firm of Bader & Bader arrived. I was then informed by Ms. Blacker, in response to further questions, that if I left a copy of the order to show cause in an in-box on the desk of I. Walton Bader's secretary, he would see it when he came to the office. I then left a true and complete copy of the annexed order to show cause and the papers on which it is based in said in-box. I told Ms. Blacker that the paper I was leaving was an order to show cause, and that a response thereto was required on September 20, 1974.

Although service of the order to show cause was not required to be made on attorneys for other defendants by 5:00 P.M. on September 13, 1974, I nevertheless called each of them between 4:00 P.M. and 4:15 P.M. on September 13, 1974 and they each stated that, if the annexed order to show cause was required to be served on them by such time, they each waived service thereof by 5:00 P.M. on September 13, 1974.

James K. Nevling, Jr.

Sworn to before me this
16th day of September, 1974.

Notary Public

HELEN REICHHOLD
Notary Public, State of New York
No. 9271661
Qualified in New York County
Commission Expires March 30, 197 6

407

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

- -x

S.D.C.N.

73 Civ. 4133 (RO)

ORDER TO SHOW CAUSE

WITH A STAY

Upon the annexed affidavit of Lawrence R. Eno, sworn to September 23, 1974, and the prior proceedings herein,

Let the plaintiffs show cause before Hon. Richard Owen, U.S.D.J., in Room 2804 of the United States Courthouse, Foley Square, New York, New York at 2:15 P.M. on October 4, 1974, or as soon thereafter as counsel can be heard, why an order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, should not be made (a) staying all discovery by plaintiffs (and particularly the deposition of defendant Touche Ross & Co. noticed for September 30, 1974) and (b) extending the time for defendant Touche Ross & Co. to object to plaintiffs' demand for production of documents by defendant Touche Ross & Co. and plaintiffs' interrogatories to defendant Touche Ross & Co. dated September 11, 1974 until 30 days after the expiration of the time of defendant Touche Ross & Co. to answer or move with respect to the amended complaint; and it is further

ORDERED, that all discovery by plaintiffs be and the same hereby is stayed, and the time of defendant Touche Ross & Co. to object as aforesaid be and the same hereby is ex-

BEST COPY AVAILABLE

tended, until the determination of this motion; and it is further

ORDERED, that service of this order to show cause, by serving copies thereof and of the papers on which it is based, personally on plaintiffs' attorneys on or before 5:00 P.M. on September 24, 1974, shall be sufficient.

Dated: September 23, 1974.

ISSUED 2:50 pm

U.S.D.J.

409

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

409

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,	73 Civ. 4133 (RO)
Plaintiffs,	ANSWERING AFFIDAVIT ON PLAINTIFFS' MOTION FOR AN ORDER EXTENDING TIME TO ANSWER INTERROGATORIES
- against -	
TELEPROMPTER CORP. et al.,	
Defendants.	

SEP 17 1974
S. D. OF N. Y.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in opposition to plaintiffs' motion for an order extending the time of plaintiffs Michael Fagan ("Fagan") and Gary Michael ("Michael") to answer the Interrogatories propounded to them by Touche Ross on November 1, 1973.

2. The instant motion will be heard simultaneously with a motion by Touche Ross to dismiss the amended complaint as to all plaintiffs pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure ("FRCP") for their failure to answer the Interrogatories as required by this Court's order of August 16, 1974.

Since the two motions will be heard together, we will in this affidavit cross-reference to Touche Ross'

motion papers on its Rule 37 motion, and the references in this affidavit to Exhibits will (unless otherwise indicated) refer to the Exhibits annexed to the moving affidavits on the Rule 37 motion.

3. Even without reference to the unusual circumstances detailed below, the motion should be denied on the basis of the facts that cannot be disputed. The Interrogatories were served on November 1, 1973. On January 30, 1974, plaintiffs were directed by Judge Richard Owen to answer the Interrogatories, which were to be answered by February 5, 1974. No answers were at any time served by Fagan or Michael. On August 2, 1974, Touche Ross moved under Rule 37(a) FRCP to compel answers to the Interrogatories. On August 16, 1974, Judge Owen granted that motion in its entirety and directed that Fagan and Michael answer the Interrogatories within 20 days, i.e., by September 5, 1974 (Exhibits E and F). Neither of them did so.

Fagan and Michael have thus failed to answer the Interrogatories for the entire period of 10-1/2 months that the Interrogatories have been outstanding; they ignored the Court's direction to answer the Interrogatories by February 5, 1974, and have been in default thereunder for 7 months; and they finally failed to comply with the order of August 16, 1974 directing the service of answers by September 5, 1974.

No explanation or excuse for this neglect has been given. There are no supporting affidavits by Michael or Fagan. I. Walton Bader, Esq., one of plaintiffs' attorneys, in his moving affirmation states "I cannot tell the reason

for the delay." Finally, no attempt to secure an extension of time for response was made until after the time to comply with the Court's order had expired. As shown below, the reason for that failure was because an effort was made to deceive us into believing that timely responses had been received from plaintiffs, and the application was made only when the effort to deceive was exposed.

Rule 6(b) FRCP, so far as pertinent, provides:

> "When . . . by order of court an act is required . . . to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; . . . " (Emphasis added.)

In the instant case, no "cause" whatever has been shown and there has been no showing that the "neglect" is "excusable." The case is quite to the contrary, as shown below. The motion should thus be denied because of the complete failure to satisfy the requirements of Rule 6(b).

4. On September 6, 1974, we received in the mail, under postmark of September 5, 1974, what purported to be answers to the Interrogatories by all the plaintiffs, namely, Fagan, Michael, Martin F. Randolph, Jr. ("Randolph") and Independent Investor Protective League ("IIPL").

In the cases of the individual plaintiffs, there was no indication showing that the plaintiffs had signed or sworn to their respective answers (Exhibits H, I and J). On September 6 and 7, 1974, we wrote to plaintiffs' attorneys pointing this out, asking for the missing

information, and requesting that the originals of the answers be filed in Court as required by Rule 6(c) of the General Rules of this Court (which requires such filing within 2 days of service) (Exhibit K).

On September 9, 1974, my office received a telephone message from Mr. Bader that he would send us photocopies of the original answers "within the next few days." We immediately on September 9 sent him a letter by hand stating that this was unsatisfactory; that if the originals had not been filed we were prepared to examine them that very day; and that if such inspection were not allowed by the end of the day September 9, or the originals were not by then filed in Court, we would assume that plaintiffs' attorneys did not have the originals and did not have them on September 5, 1974, when they purported to serve the answers by sending us copies (Exhibit L).

The inspection of the originals was not permitted by the end of the day September 9, 1974 nor were the originals filed in Court by then.

On September 10, 1974, my office received another call from Mr. Bader stating that he would "be sending photocopies of the original answers." After receiving that message, I called Mr. Bader's office and spoke to a woman who stated that she was Mr. Bader's secretary. After being told that Mr. Bader was unavailable and could not be reached, and after telling Mr. Bader's secretary that unless he called me by 1:00 P.M. I would communicate with the Court, Mr. Bader called me shortly before 1:00 P.M. I told Mr. Bader that I wanted immediately to inspect all the original answers. He said that he had the originals and "you can take my word for it." I told him that that did not satisfy me and that I

wanted an immediate inspection. Mr. Bader said that he could not agree because he was involved in depositions. I told him that I would inspect them later that day in his office after his depositions were concluded. Mr. Bader then said that he did not know where the originals were in his office and that he might have left them at home. Mr. Bader said that I could see them sometime the following day. I told him that Mr. Nevling of our firm would be in his office at 9:00 A.M. the following day to inspect the originals, and Mr. Bader agreed. I sent a confirming letter by hand on September 10 to Mr. Bader (Exhibit M).

When Mr. Nevling appeared at Mr. Bader's office on the morning of September 11, he was shown original sworn answers of IIPL and Randolph, and Mr. Bader then told Mr. Nevling that he had not received signed or sworn answers from Fagan or Michael. As shown on Touche Ross' motion under Rule 37, there is no proof that Randolph's signed and sworn answers were in the possession of plaintiffs' attorneys on September 5, 1974 and it presently appears that they were not.

Thus in the cases of Michael and Fagan (and probably Randolph as well), what Mr. Bader sent to us on September 5, 1974 were drafts of proposed answers by those plaintiffs, and those drafts were sent to us in an effort to mislead us into believing that those plaintiffs had made timely responses to the Interrogatories as ordered by the Court on August 16, 1974.

In response to a letter that we addressed to the Court on this subject on September 11, 1974, Mr. Bader sent a letter to the Court on that day. A copy of Mr. Bader's letter is attached hereto. That letter contains a number of misstatements. Analysis of those misstatements

simply confirms that there was in existence a deliberate effort to mislead counsel and the Court. Thus:

(a) In his letter of September 11, 1974, Mr. Bader suggests that the copies of the purported answers of the individual plaintiffs were "inadvertently" mailed to us on September 5 by some unnamed person in his office. The fact is that those purported answers arrived in the same envelope with the answers of IIPL. Appended to the answers of IIPL was a certification by Mr. Bader to the effect that on September 5, 1974 he mailed the copies of IIPL's answers to all attorneys (Exhibit G). The mailing was thus apparently by Mr. Bader and not by someone in his office. The excuse of "inadvertence" is thus without substance, as the following discussion also shows.

(b) Mr. Bader in his letter of September 11 says that on September 9 he told my office that he "hoped to receive the signed copies of those interrogatories [i.e., the answers of Fagan, Michael and Randolph] and would be mailing them in a few days." Mr. Bader left no such message in my office. Annexed hereto is an affidavit of Ms. Rosalyn Rosen, who received Mr. Bader's message, to which is attached a copy of her original message slip. The message slip shows that a telephone message was received from Mr. Bader at 9:15 A.M. on September 9 and the message to me was: "Rec'd your letter about Teleprompter case [i.e., my letter of September 6 requesting filing of the originals and information as to their execution -- Exhibit K]. Will send you photocopies of original Interrogatory

answers within next few days." As Ms. Rosen states, that was the entire message.

After receiving that message, I wrote, and had hand delivered to Mr. Bader, my letter of September 9 (Exhibit L) in which I stated that his proposal was unsatisfactory and demanded immediate filing or opportunity to inspect the originals.

(c) Mr. Bader in his letter of September 11 says that on September 10 he again told my office that he "hoped to receive the signed copies of the original documents in a few days." Mr. Bader left no such message in my office. Annexed hereto is an affidavit of Ms. Muriel Kresh, who received that message of Mr. Bader, to which is attached a copy of her original message slip. The message slip shows that a telephone call was received from Mr. Bader at 9:25 A.M. on September 10 and the message to me was: "Mr. Bader called. Re Interrogatories. He will be sending photocopies of the original answers. He extends his apologies. He will extend your time answer for 2-1/2 or 3 weeks." As Ms. Kresh states, that was the entire message.

In neither case did Mr. Bader state, as he claims he did, that he was awaiting receipt of the originals from his clients. In both cases he said that he would be sending "photocopies of the original answers," thus reinforcing the impression that he sought to create that he had the originals and would forward the proof of that fact by sending photocopies.

(d) The character of Mr. Bader's misstatements can be judged from my conversation with Mr. Bader on September 10, after receiving the aforesaid message from Ms. Kresh. The substance of that call has already been set forth. At no time did Mr. Bader in that call say that he did not have all the originals of the answers or that he "hoped to receive the originals." Had he done so, obviously the inspection would have been unnecessary.

There are some other things that may be noted about Mr. Bader's letter of September 11, as follows:

(a) Mr. Bader says that he was in Washington, D. C. on Monday, September 9. He does not say when he left for Washington, D. C. However, he called my office at 9:15 A.M. that day. The call was in response to my letter of Friday, September 6. That letter was most explicit in its references to the original answers (Exhibit K). Mr. Bader's response to that letter in his telephone call on September 9 was knowledgeable even though deceptive. Yet Mr. Bader says that, when he made the call, all he knew was that we had sent a letter and that he did not know what the letter said.

(b) My hand-delivered letter of September 9 (Exhibit L) was also most explicit in demanding immediate inspection or filing of the original answers. Mr. Bader does not say when or how this letter came to his attention. Yet at 9:25 A.M. on September 10 he made another knowledgeable, even though deceptive, call to my office. And when

he spoke to me before 1:00 P.M. on September 10, Mr. Bad. exhibited complete knowledge of what I was talking about.

The claim in Mr. Bader's letter of September 11 that it was not until sometime after 6:00 P.M. on September 10 that he realized what had happened, is obviously untenable.

5. In addition to the foregoing, it should be noted that Mr. Bader admittedly at all times knew that he did not have the original answers of Fagan and Michael. Yet he made no attempt to secure any extension of time for the filing of their answers until the pressures we exerted compelled him to admit to us that he did not have the originals of their answers. Obviously, what Mr. Bader was hoping was that if he delayed the inspection long enough the originals would come in in the interval, as was apparently the case with Randolph. Finally, knowing that he would have to admit that he did not have the originals at 9:00 A.M. on September 11, when Mr. Nevling would be in his office, Mr. Bader earlier that morning (as he admits in his letter of September 11) prepared the instant motion papers for an extension of time.

6. It is clear for all the foregoing reasons that plaintiffs' motion should be denied.

Lawrence R. Eno

Sworn to before me this
16th day of September, 1974

Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7512545
Qualified in New York County
Commission Expires March 30, 1976

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

418

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et c.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER CORP. et. al.

Defendants

SUPPLEMENTAL AFFIDAVIT BY PLAINTIFF INDEPENDENT INVESTOR PROTECTIVE LEAGUE

STATE OF NEW YORK
ss:
COUNTY OF PUTNAM

MERRILL P. SANDS, being duly sworn, deposes and says:

I am the Secretary and a Director of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and am the management representative of the League in charge of this litigation. I am controlling the strategy of this litigation and my attorneys are carrying out my instructions. Indeed the attorney in charge of this case for the plaintiffs is General Counsel of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

At the outset I wish to inform the Court that Mr. Randolph, one of the plaintiffs in this action, first approached me in connection with the issues in this case and it was I who made Mr. Randolph a member of the League.

I further state that the inadvertent mailing of a set of unsigned answers to interrogatories was done by me by inadvertence upon my visit to Mr. Bader's office late in the day of

September 5th, 1974. I had, prior to the said mailing, seen the executed answers of Mr. Randolph which had arrived late in the day at Mr. Bader's office and I then assumed that I could send out the copies thereof.

I therefore wish to inform the Court that while the mailing of these copies to the attorneys for Touche Ross & Company was an inadvertence it was my inadvertence and was not due to any fault of Mr. Bader.

I also wish to inform the Court as to the reason for th delay in answering the interrogatories in the first instance.

My investigation of the SEC files indicated that Touche Ross & Company, the defendant herein, had been severely dealt with by the SEC in connection with audits performed for U.S. Financial I also determined that the SEC had a preliminary investigation in progress with respect to TELEPROMPTER CORPORATION. I was informed by the SEC that, under no circumstances, will investigational files be made available with regard to an investigation in progress by the SEC but, after the conclusion of an investigation, if it results in administrative sanctions or court action, the processes and pleadings involved will become available to the public. Also, if the investigation concludes with some type of voluntary sanctions it is sometimes possible to obtain the SEC investigational files.

Therefore, in this case, I determined that the League should not go ahead with an active role in this action until the SEC investigation was concluded. The SEC investigation has, in fact, now been concluded and resulted in a consent order against TELEPROMPTER CORPORATION. Discovery can now be had with respect to the manner in which the investigation was conducted and possibly obtain access to the SEC investigative file.

I was subsequently informed by Mr. Bader that he had arranged an "open ended" stipulation with the defendants wherein, so long as the interrogatories were not answered, the defendants would not have to answer or otherwise move with respect to the Complaint.

I now go to the claim, made by the defendant TOUCHE ROSS & COMPANY that the interrogatories, as required to be answered by Court Order, were not properly answered within the time allowed. This is, I submit, utter nonsense.

The records of purchases and sales of TELEPROMPTER stock, as set forth in the records of the League, were fully set forth in the Answers to Interrogatories. The reason why sales were not mentioned with respect to all members other than Randolph is that, insofar as the League is aware, there were no such sales. With respect to the claim that there was not full disclosure of all purchases the records of the League set forth only those purchases given by its members to the League. Thus the answers to interrogatories supplied heretofore represent the total knowledge known to the League and the claim that these answers are inadequate is total nonsense.

The League has also obtained, from the plaintiff RANDOLPH, all of the confirmations of his stock purchases. These are annexed to this affidavit. There is some variance between these confirmations and the information supplied in the answers to interrogatories of RANDOLPH. However the RANDOLPH answers were qualified as constituting his best knowledge at the time these answers were given. If they are inaccurate the defendants are at liberty to make any application to the Court that they so desire.

The League has also received the answers of the plaintiff MICHAEL and these answers have been now filed with the Court and duly served upon the attorneys for all defendants.

WHEREFORE the undersigned prays that the motions made by the defendant TOUCHE ROSS & COMPANY be in all respects denied and the motion for extension of time by the plaintiffs be in all respects granted.

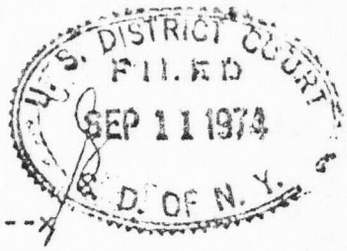
Merrill R. Sands

Sworn to before me
this 17th day of September 1974.

I. WALTON HADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5130950
Qualified in New York County
Commission Expires March 30, 1976

422

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs, -against- TELEPROMPTER CORP., ET AL., Defendants.	CIVIL ACTION 73 CIVIL 4133 (RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (i) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase. (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1973	100	29-7/8
January 15, 1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF: SAN DIEGO)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Martin F. Randolph, Jr.

SWORN TO BEFORE ME
THIS 3rd DAY
OF September, 1974.

OFFICIAL SEAL
DIANE McCREEDY
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires May 29, 1978

Diane McCreedy

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on September 19th, 1974, I mailed a copy of the within document to all of the attorneys affected by same, Rosenman Colin,

I. Walton Bader

425

426

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,	CIVIL ACTION 73 CIVIL 4133
Plaintiffs,	JUDGE MACMAHON
-against-	
TELEPROMPTER CORP., ET AL.,	
Defendants	

STATE OF : NEW YORK)
) ss.:
COUNTY OF : NEW YORK)

DOROTHY BLACKER, being duly sworn, deposes and says:

I am Secretary to I. WALTON BADER. I am employed on a parttime basis and work only on Tuesdays, Wednesdays and Thursdays of each week from, approximately, 10:30 A. M. to 3:30 P. M.

I am very, very busy with stenographic and dictaphone work and rarely, if ever, have the duty of opening Mr. Bader's mail. My office is located in the very rear of a suite of offices, and the mail is delivered to the front office.

427

One day I was given an assignment by Mr. Bader regarding the above-entitled case. Mr. Bader subsequently left the office. I typed up the original Interrogatories addressed to, I believe, three people, and also typed up copies of same for the respective attorneys. However, since the original Interrogatories had to be Notarized, I mailed the original Interrogatories to the three people for Notarization and I placed the copies of these Interrogatories which were meant for the Defendants' attorneys in the file, because the copies had to be conformed with the originals when they were subsequently returned, before mailing to the respective attorneys.

I had no further contact whatsoever with the handling of this particular matter, after I had performed the above work.

Dorothy Blacker

SWORN TO BEFORE ME

THIS 31 DAY OF

OCTOBER, 1974.

I. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24 5140850
Qualified in New York County
Commission Expires March 30, 19 76

Notary Public.

128

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEP 26 3 00 PM '74
S.D. OF N.Y.

428

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

CIVIL ACTION
73 Civil 4133
(RO)

NOTICE

S I R S :

PLEASE TAKE NOTICE that a hearing has been directed by Hon. Richard Owen, U.S.D.J., into the circumstances relating to the service on September 5, 1974 of purported answers by plaintiff Martin F. Randolph, Jr. to Interrogatories dated November 1, 1973 propounded by defendant Touche Ross & Co. Said hearing will take place on October 11, 1974 at 3:00 P.M. in Room 2804 of the United States Courthouse, Foley Square, New York, New York.

PLEASE TAKE FURTHER NOTICE that at such hearing the undersigned will require the testimony of I. Walton Bader, Esq., Mr. Bader's secretary and Merrill R. Sands; and that there should be produced at such hearing all records, including travel vouchers, tickets and hotel bills, relating to the whereabouts of Mr. Bader on each of the days September 5 to September 11, 1974 inclusive and of Mr. Sands on September 5, 1974.

Dated: New York, New York
September 25, 1974

Yours etc.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By Lawrence R. Eno
A Member of the Firm
575 Madison Avenue
New York, New York 10022
MU 8-7800
Attorneys for Touche Ross & Co.

TO: BADER & BADER, ESQS.
Attorneys for Plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN, ESQS.
Attorneys for defendant William J. Bresnan
350 Fifth Avenue
New York, New York 10001

480

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
NOV 27 1974
S.D. OF N.Y.

HARRY LEWIS,

Plaintiff,

-against-

TELEPROMPTER CORP.,

Defendant.

73 Civ. 3929

RUBEN TJREK and HARRY SIGAFOOS,

Plaintiffs,

-against-

TELEPROMPTER CORPORATION,

Defendant.

73 Civ. 4109

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected and in behalf of the Classes involved herein, GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, JR. individually and as Class Representatives, and in behalf of all other parties similarly situated and circumstanced,

Plaintiffs,

-against-

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD DOE" being ficticious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts set forth herein, and SECURITIES AND EXCHANGE COMMISSION,

Defendants.

ORDER OF CONSOLIDATION

73 Civ. 4133

PHILIP HELLER and WILMA P. GOTTLIEF, on their own behalf and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

TELEPROMPTER CORP., JACK KENT COOKE, W. J. BRESNAN and J. D. WRATHER, JR.,

Defendants.

73 Civ. 4895

HYMAN RADZANOWER,

Plaintiff,

-against-

74 Civ. 3025

TOUCHE, ROSS & CO., TELEPROMPTER CORPORATION, JACK K. COOKE, RAYMOND P. SHAFER, W.J. BRESNAN, H.J. SCHLAFLY, LEONARD TOW, R.C. TODD, JR., B.P. SIMON, J.B. GREEN, L.H. READ, R.G. WILSON, H.E. FLAHERTY, B.D. FISCHMAN, BERLE ADAMS, MARVIN CARTON, R.F. LEWIS, P.L. LOWE, CHARLES LUCKMAN, M.B. MITCHELL, A.E. PUCKETT, J.H. RICHARDSON, M.E. LIVINGSTON, JACK WRATHER and FIRST NATIONAL BANK OF BOSTON,

Defendants.

STEPHEN BUSH, as Admtr. C/T/A ALEXANDER BUSH, dec'd.,

Plaintiff,

-against-

74 Civ. 3281

TELEPROMPTER CORPORATION, TOUCHE, ROSS & CO., JACK K. COOKE, RAYMOND P. SHAFER, WILLIAM J. BRESNAN, BERLE ADAMS, MARVIN CARTON, RALPH F. LEWIS, PHILIP L. LOWE, CHARLES LUCKMAN, MAURICE B. MITCHELL, ALLEN E. PUCKETT, JOHN H. RICHARDSON, MONTE E. LIVINGSTON, JACK D. WRATHER, J. M. GARTENLAUB, J. R. BARRINGTON, LEONARD TOW, ROBERT C. TODD, JR., LESLIE H. READ, ROGER G. WILSON, HUGH E. FLAHERTY, BERNARD D. FISCHMAN, HUBERT J. SCHLAFLY,

Defendants.

LEON BRILL,

Plaintiff,

-against-

74 Civ. 4341

JACK KENT COOKE, RAYMOND P. SHAFER, WILLIAM J. BRESNAN, HUBERT J. SCHLAFLY, BERLE ADAMS MARVYN CARTON, RALPH F. LEWIS, PHILIP L. LOWE, CHARLES LUCKMAN, MAURICE B. MITCHELL, ALLEN E. PUCKETT, JOHN H. RICHARDSON, MONTE E. LIVINGSTON, JACK WRATHER, TOUCHE, ROSS & CO. and TELEPROMPTER CORPORATION,

Defendants.

The Court having held a hearing on September 27, 1974 to determine the most efficient manner in which to conduct these related litigations and having heard counsel for all parties desiring to be heard, and being fully advised in the premises, it is, in the exercise of the Court's discretion,

ORDERED:

1. The above designated actions (sometimes herein "constituent actions") are hereby consolidated for all purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, except that the claims on behalf of plaintiff Stephen Bush asserted in Count Two of the action bearing number 74 Civ. 3281 (the "Bush" action) shall be consolidated for pretrial purposes only.

2. A consolidated complaint shall be prepared and served herein by lead counsel and shall set forth the claims for relief asserted in the constituent actions (except that the claims on behalf of plaintiff Stephen Bush asserted in Count Two of the Bush action shall not be included in such consolidated complaint), such consolidated complaint to be served within thirty (30) days of the date of service of a copy of this order with notice of entry.

3. The firm of Wolf Popper Ross Wolf & Jones is hereby designated as lead counsel for plaintiffs in the constituent actions. Lead counsel shall be in charge of the entire conduct of the consolidated action on behalf of all plaintiffs herein, including the trial and all pretrial procedures and all other proceedings affecting the conduct or disposition of the consolidated action, and shall, without limitation, perform and have the following duties and powers:

(a) To serve upon or receive from defendants all leagal or other papers, notices and motions herein;

(b) To act as spokesman for plaintiffs at pretrial conferences and hearings;

(c) To initiate and conduct all discovery, motions, and other actions relating to pretrial proceedings on behalf of plaintiffs,

(d) To enter into and conduct settlement negotiations with defendants;

(e) To perform such other functions as may be consistent with the foregoing or authorized by the Court. All examinations before trial and other depositions of witnesses or parties taken on behalf of plaintiffs shall be conducted by lead counsel; the respective attorneys of record for the plaintiffs, other than lead counsel, shall be given notice thereof by lead counsel and shall have the right to attend the same, and upon the conclusion of the testimony of each witness or party, such attorneys shall have the right to suggest additional questions to be propounded by lead counsel, in its discretion, to the witness or party. The respective attorneys for the plaintiffs, other than lead counsel, shall have such right to participate in the trial of the consolidated action as the Court may allow.

4. The consolidation hereby ordered shall be without prejudice (a) to any proceedings and orders heretofore had in any of the constituent actions, and (b) with respect to constituent action bearing number 73 Civ. 4133, to any order that may be made by Hon. Richard Owen, U.S.D.J., in proceedings pending before him. All motions to determine class action status pursuant to Rule 23 of the Federal Rules of Civil Procedure

pending in the constituent actions are hereby withdrawn without prejudice and are subject to renewal as hereinafter provided.

5. All papers hereafter filed shall be captioned as follows:

HARRY LEWIS, et al.,

Plaintiffs,

v.

TELEPROMPTER CORP., et al.,

Defendants.

73 Civ. 3929
73 Civ. 4109
73 Civ. 4133
73 Civ. 4895
73 Civ. 3035
74 Civ. 3281
74 Civ. 4341

Consolidated Action

A copy of this order shall be filed in each of the constituent actions. The Clerk thereafter shall maintain a docket only in Action No. 73 Civ. 3929.

6. Defendants shall serve and file their respective answers to the consolidated complaint, or otherwise move with respect thereto, within twenty (20) days after service thereof. Defendants shall serve and file their answers to Count Two of the Bush complaint, or otherwise move with respect thereto, within twenty (20) days of the date of service of a copy of this order with notice of entry. Within twenty (20) days of service of the consolidated complaint, lead counsel shall, on behalf of plaintiffs, serve and file a motion pursuant to Rule 23 of the Federal Rules of Civil Procedure to determine whether the consolidated action may be maintained as a class action.

7. All present and former stockhol
Teleprompter Corp. (other than plaintiffs in the cor
actions) shall be and are hereby stayed from commenci
continuing any derivative or representative actions, su
proceedings in this Court, with respect to Teleprompter Corp.
against Teleprompter Corp. and the other defendants named in

constituent actions and from proceeding with any such actions, suits or proceedings commenced on or after the date of entry of this order, based upon any of the transactions complained of in the constituent actions, and the service of a copy of this order upon the attorneys for plaintiffs or plaintiffs in such action other than the plaintiffs in this consolidated action, shall be sufficient notice of this stay.

8. Each of the plaintiffs in the constituent actions herein shall bear a proportionate share of all costs, expenses and disbursements hereafter incurred by lead counsel in the consolidated action.

Dated: New York, New York
November 15, 1974

s/ L. F. McMahon
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

against

Civil Action
73 Civil 4133

TELEPROMPTER CORPORATION et. al.

Defendants

SUPPLEMENTAL
AFFIDAVIT OF I.WALTON BADER
ON DEFENDANT TOUCHE ROSS MOTION
UNDER RULE 37 FRCP

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, being duly sworn, deposes and says:

I am the attorney for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

On January 13th,1975 I received a photo-copy of the Court's notes which were taken on the hearing of the Rule 37 motion on September 20th,1974.

I have compared these notes with the purported memorandum of what was said on the said hearing on September 20th 1974 made by Mr. Eno.

The Court's notes are inconsistent with Mr. Eno's memorandum. Since the Court's notes were taken at the time of the argument by a Judicial Officer whose sole interest is to obtain the truth while Mr. Eno's memorandum was typed by one of his

secretaries subsequent to the time of the hearing it is obvious that, in case of inconsistency, the Court's notes must prevail.

In reading both of these memoranda I cannot conceive of how I could have told the Court that I left my office on September 5th,1974 at 3PM and that Mr. Sands was with me at the time. By my sworn testimony I stated that I had left the office between 12 and 2 PM and that Mr. Sands had left my office earlier that day. Mr. Sands, of course, was with me on September 5th,1974 as I previously have testified.

I did state that the RANDOLPH answers to interrogatories came into my office in the 3 o'clock mail and this is confirmed by the Court's notes. This is, of course, correct and is in accord with my testimony. (Actually, on that day, the "three o'clock mail" stated by the United States Post Office to be delivered between 1:15 PM to 2:30 PM was delivered somewhat earlier than 3PM on September 5th,1974.)

I further cannot conceive how I could have told the Court that I knew the unconformed copies of the RANDOLPH interrogatories were sent at the time that I had a conversation with Mr. Eno on September 10th,1974. This does not appear in the Court's notes. As stated in my testimony I knew this in the evening of September 10th,1974.

The Court's notes further reveal confirmation of my testimony given at the hearings in this matter. I testified that I had made an investigation of the identity of the person who had mailed out the unconformed copies of the RANDOLPH interrogatories and the Court's notes stated that I "Did an awful lot of investigating." This, of course, does not appear in the ENO memorandum of what was purportedly said at the September 20th hearing.

The Court's notes further confirm my testimony to the effect that on September 9th,1974 I received advice from Mr. Sands

BEST COPY AVAILABLE

that a letter had been received from the ROSENMAN COLIN firm. The Court's notes on this matter read as follows:

"Knew on 9th that Sands said"

This statement concededly made on the September 20th argument does not appear in the ENO memorandum.

The Court's notes do indicate (and the Court so stated during the course of the hearings in this matter) that on the argument of the September 20th,1974 Rule 37 motion I stated to the Court that I had told SANDS on September 5th,1974 that if the answers to the interrogatories came into my office I wanted him to send them out. The Court's notes read as follows on this matter,

"Bader said to Sands on Sept.5.
If answers come in want you to send
answers out."

Interestingly enough the record shows a statement by Mr. Eno that the Court, when such statement was made, stated that this was inconsistent with the Sands affidavit submitted at that time (which is, of course, true). The statement involved appears on page 59 of the transcript and reads as follows:

"Q. And after you made this statement to Judge Owen didn't Judge Owen point out to you that that was not in conformity with Mr. Sands affidavit where Mr. Sands had merely said that he assumed that he could send the answers out when he had received Mr. Randolph's answer?"

The above statement, also, appears in the ENO memorandum and reads as follows:

"Judge Owen pointed out that this was not in conformity with Sands' affidavit, in which he made no mention of any discussion with Bader about the answers and in which he said he came to the office in the late afternoon and "assumed" that he could send the copies of the answers when he found Randolph's answer."

Based on the above, and considering the testimony of Mr. Sands at page 68 of the transcript reading as follows [illegible]

make an assumption of how the error came about. Sands testified that:

> "* * * He (Mr. Bader) said, these (the copies of interrogatory answers) have to go out today, but they can't go out until the answers arrive.* * *"

It is quite possible that I may have stated, on the September 20th 1974 argument that I told Sands that the copies of the answers could not go out until the original answers arrived and that my statement was misconstrued. I further state that, if, in fact, the Court informed me that the representation that I had told Sands to mail the copies of the answers to interrogatories as soon as the original answers had come in was inconsistent with the statements made in the Sands affidavit I would have informed the Court that the statements contained in the affidavit would have to control. It must also ne noted that the Sands affidavit was drawn by myself so that the statement involved, if made, would have been inconsistent with the facts.

I next come to the suggestion made in the defendant TOUCHE ROSS' papers that my testimony that I could not have Mr. Scher, of his office staff, take care of the problems which were taken care of by Mr. Sands does not accord with the facts and is not correct. I annex to this affidavit a copy of a letter written by Mr. Scher and signed by me which terminates my association with the firm of RICHARDS & GELLER as of December 20th,1974. The letter clearly shows the difficulties involved between myself and Mr. Scher. My name is no longer on the door at 274 Madison Avenue, New York,N.Y. and I am no longer a partner in RICHARDS & GELLER.

I now come to the suggestion made by Mr. [illegible] to the effect that, since I was in the Grand Central Area on September 5th,1974 by my own testimony, I could have mailed the copies of the interrogatory answers at that time. This suggestion does not

even rise to the dignity of circumstantial evidence in the light of the direct testimony of Sands that he, in fact, mailed the copies involved. However, for the information of the Court, the earliest that I could have obtained bus transportation to New York from Newark Airport after I missed my 8:05 PM plane would have been 8:10 PM. This would have brought me to the 40th Street and 8th Avenue bus terminal at about 8:45 to 9PM. Assuming a ten minute walk to 42nd Street and 8th Avenue from the bus terminal and even assuming a direct connection with the 42nd Street crosstown bus this would mean an arrival at Grand Central Terminal at about 9:30 PM. Assuming a ten minute walk to my office at that time and a ten minute walk back plus, let us say, 5 minutes at my office, plus the time necessary to have the night watchman open the door of the building both times for me we must add at least 35 minutes making my arrival at Grand Central about 10:10 PM. At this time, of course, there no longer is any mail collection from the mailboxes in the area so that the answers would not have arrived on September 6th, 1974 as, in fact, they did.

Mr. ENO makes a further suggestion that on September 9th, 1974, when I testified that I left for Washington DC on the 11 AM Southern Airways plane (it actually leaves at 10:59AM) from La Guardia Airport, I could have gone to my office in the morning of September 9th, 1974, seen Mr. ENO's letter, and made the telephone calls involved. A consideration of the time periods involved shows this to be impossible.

The telephone records introduced by Mr. Eno show that the first call to him was made on September 9th, 1974 at 9:15 AM. Assuming the call was completed at, let us say, 9:17 AM I would then have to pick up my automobile which, because of parking

regulations in the area, had to be parked in a parking garage. (Nor could I ignore the regulations and chance a traffic violation, the area is a "tow away zone" and ignoring of the regulations would cause me to lose my car).

Assuming that I would leave my office immediately after completing the telephone call the time consumed by waiting for the elevator and walking to the nearest parking garage would consume at least ten (10) minutes. This would put my arrival at the garage involved at about 9:30 AM. This time, however, is a very busy time and it would be inconceivable that I could obtain delivery of my car before at least 15 additional minutes had passed. This would put the time of my departure for LaGuardia Airport at 9:45AM.

At that time of day, since only one lane of the Queens Midtown Tunnel operates to Queens and extensive traffic delays are present on the New York Side, it is not possible to reach the La Guardia Airport Area before at least one hour from the time of departure. This would put my arrival at the LaGaurdia Airport Area at about 10:45 AM. However the automobile must now be parked. Parking facilities at LaGuardia are in a very sorry state at this time because of the construction of a parking garage. Generally the "close lot" is filled and parking must be performed in the remote lot. There is a bus connection to the terminal but this takes about 15 to 30 minutes. Thus I could not have arrived at the terminal until 11 AM at the earliest, too late to make the 10:59 plane.

The telephone record of September 9th of Mr. LNO also shows another call to have been made at 10:37 AM on that date. To have gone to my office on September 9th, 1974 and to have made the two telephone calls at 9:15AM and 10:37 AM and to have left on the 10:59 plane from LaGuardia Airport would have been impossible.

442

It is even more interesting to note that, despite the suggestions made by Mr. ENO that my testimony as to my whereabouts on September 9th,1974 is not credible, he himself knew that I was out of my office on that date. His own telephone records show a telephone call made to me on that date.

Finally I have determined that a record does exist showing my attendance at the Federal Power Commission settlement conference in Washington DC on September 9th,1974. Mr. Head, an attorney representing various intervenors in that proceeding, does have a copy of the attendance sheet but did not have it available for me when I attended another meeting in this proceeding on January 9th,1975. I also believe that the well-known law firm of BAKER & BOTTS of Houston Texas, probably has a copy of this list in its possession. Thus my attendance at the September 9th,1974 meeting in Washington DC is clearly established.

WHEREFORE the undersigned prays that the Rule 37 motion made by the defendant TOUCHE ROSS & COMPANY herein be in all respects denied.

I.Walton Bader

Sworn to before me
this 16th day of January 1975

Notary Public

76

December 20, 1974

V. Alexander Scher, Esqs.
274 Madison Avenue
New York, New York

Richards & Geier, Esqs.
274 Madison Avenue
New York, New York

Gentlemen:

This will acknowledge, evidence and confirm the understanding between us with respect to a certain agreement we entered into in 1970, which, among other things, made provision for our association in the practice of patent and trademark law under the firm name (style) of Richards & Geier at 274 Madison Avenue, New York, New York.

That inasmuch as we have failed substantially to fulfill the intended objectives of a joint practice in recent years, and since the undersigned has indicated his present intention of removing from the premises now occupied by you, it is hereby agreed as follows:

1. That I have no claim against you for any present or past remuneration nor any other claim whatsoever arising out of our 1970 agreement or for any other reason.

2. That you have no claim against me for any present or past remuneration nor any other claim whatsoever arising out of our 1970 agreement or for any other reason.

3. That the lease of the premises which has been occupied by us at 274 Madison Avenue, New York, New York, shall henceforth be your sole responsibility without asserting any claim against me whatsoever.

4. I agree not to represent in any manner in the future that I am identified or associated with the firm of Richards & Geier and that said style of Richards & Geier has always been owned by you and that the practice of patent and trademark law conducted under said style has always been owned and controlled by you and has been in recent years and to the present time is owned by you solely.

Kindly indicate your agreement, acceptance and acknowledgement hereto by signing the duplicate copy hereof where indicated.

Very truly yours,

I. WALTON BADER

ACKNOWLEDGED, ACCEPTED & AGREED:

V. Alexander Scher

BEST COPY AVAILABLE

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Investigation of Pennzoil Company - United Gas Pipe Line Company Spin-Off and Related Transactions	)))	Docket No. RP74-87

INTERVENORS' OBJECTIONS TO PROPOSED SETTLEMENT

January 14, 1975

On December 20, 1974, Pennzoil and United filed a Joint Motion alleging that settlement discussions have resulted in an Agreement between United, Pennzoil and a Drafting Committee appointed by a group of Active Intervenors.

On January 9, 1975, the undersigned, one of the attorneys representing the Intervenors PHILLIP J. STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGUE, appeared at a conference held at the Office of the Interstate Natural Gas Association in Washington, D. C., to discuss the proposed settlement.

The discussions took the entire day of January 9, 1975 and, at the conclusion of the disucssions, it was obvious that the Proposed Agreement was not acceptable to the majority of Intervenors.

At the above conference, the undersigned pointed out that, in any event, the Proposed Agreement was not acceptable to the Intervenors STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGUE by reason of the fact that no provision was made in the Proposed Agreement for protection of the interest of Debenture Holders of Pennzoil who were seriously prejudiced by reason of the fact that such Proposed Agreement would

regularize the "spin-off" of United from Pennzoil and would even worsen the position of the Debenture Holders by cancelling the One Million Shares of Preferred Stock of United which is now held by Pennzoil. Furthermore, Pennzoil has flatly refused to reduce the conversion price of the Common Stock of Pennzoil by reason of the "spin-off" of United.

At a further conference, on January 9, 1975, at about 4:00 P. M., the attorneys for Pennzoil and United flatly refused to make any provision for the Pennzoil Debenture Holders.

It is the position of the Intervenors STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGUE that there is no possibility of a settlement of this proceeding which is being held before the Federal Power Commission, unless the "spin-off" of United is rescinded by the Federal Power Commission.

The record before the Commission amply demonstrates that United, divorced from Pennzoil, will be a far weaker Company than heretofore. As a result, the availability of gas to various customers will be reduced. Furthermore, separation of United from Pennzoil will result in higher natural gas prices and, therefore, would not be in the public interest.

In addition, there is a serious question whether United, standing alone, will be a viable entity.

This Commission must also thoroughly investigate the possible violation of the Natural Gas Act by reason of the United "spin-off".

Under the circumstances, the Intervenors STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGE, respectfully oppose any settlement of this proceeding unless Pennzoil and United

agree to set aside the "spin-off" of United and this position is being transmitted to the Commission for the Commission's information.

Dated: January 14, 1975

Respectfully submitted,

I. Walton Bader

I. Walton Bader
BADER and BADER
Attorneys for Intervenors
Steinberg and
Independent Investor
Protective League
270 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860

BURTON H. SHOSTAK,
Attorney for Intervenors,
Steinberg and
Independent Investor
Protective League
818 Olive Street
St. Louis, Missouri

EDWARD F. O'HERIN,
Attorney for Intervenors
Steinberg and
Independent Investor
Protective League
New Madrid, Missouri

447

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

against

Civil Action
73 Civil 4133

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIDAVIT OF MERRILL SANDS

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

MERRILL SANDS, being duly sworn, deposes and says:

I am the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

The INDEPENDENT INVESTOR PROTECTIVE LEAGUE, a membership organization, is vitally concerned with respect to the pending Rule 37 application since costs and expenses are being sought against it in this proceeding.

I have read the affidavit of LAWRENCE R. ENO, sworn to January 30th, 1975 and wish to reply thereto.

At the outset, I wish to point out to the Court that the burden of proof on the part of the plaintiffs are not to prove that the RANDOLPH answers arrived at the office of the plaintiffs' attorney on September 5th, 1974 but it is the burden of proof on the part of the defendant TOUCHE ROSS & COMPANY to prove that the answers did not arrive at the office of the plaintiffs' attorney on September 5th, 1974

Furthermore there is no question that the answers of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE were served and mailed on time.

The evidence is overwhelming that the RANDOLPH answers were in the office of the attorney for the plaintiffs on September 5th, 1974. The answers were mailed on September 3rd, 1974 at 1PM directly from the appropriate post office in San Diego California. By normal delivery schedules as shown by the postal information submitted to the court these answers should have arrived on the First Delivery on September 5th, 1974. (They actually arrived on the Third Delivery on that date). THERE IS NO EVIDENCE TO THE CONTRARY THAT HAS BEEN SUBMITTED BY THE DEFENDANT TOUCHE ROSS & COMPANY.

I am extremely concerned with the continuing lack of candor with the Court shown by the defendant TOUCHE ROSS & COMPANY. In the January 30th, 1975 affidavit Mr. Eno states the following:

> "* * * My office has checked with the Post Office Department and has been advised that an air-mail letter deposited in a letter box in San Diego, California after 5:30 PM on September 3, 1974 would not have been delivered on September 5, 1974. (emphasis supplied). * * *"

This is a deliberate and wilful attempt to mislead and trifle with the Court. The RANDOLPH affidavit shows that the answers were mailed at 1 PM on September 3rd, 1974 and from a POST OFFICE in San Diego California. Such unclean hands on the part of the defendant TOUCHE ROSS & COMPANY does not warrant the grant of any relief to this defendant.

The lack of candor with respect to the Court on the part of the defendant TOUCHE ROSS & COMPANY is further demonstrated by the strange circumstances with respect to the alleged telephone calls made on September 9th, 1974. In his testimony Mr. Eno stated the following (Tr. 204-205)

> "* * * IN the morning I received the message that has been marked here from Mrs. Rosen, who is a receptionist in our office, * * * When I received that message, your Honor--well, before that--there was apparently another phone call to me from Mr. Bader, and it is my practice to keep a record of my incoming and outgoing calls, and at 10:30 on that morning, according to this record that was kept by the substitute for my secretary, Mr. Bader called.
>
> I was not available * * * and this girl, who I forgot what her name is, reported that she could not get in touch with him.* * *"

Since there were serious questions with respect to the record of the alleged telephone calls (Exhibit Q) the plaintiffs' memorandum called this fact to the Court's attention.

An affidavit has now been submitted by Mr. Eno, which is in conflict with the testimony. In the first place the testimony shows Mr. Bader's second alleged telephone call as taking place at 10:30 and not 10:37. The "AM" notation appears to have been placed therein later (note the "squeezing" of this notation in the exhibit). Mr. Eno now states that he met with the temporary secretary (whose name he now conveniently remembers) at 9:30 AM. (Conveniently after the 9:15 telephone call of Mr. Bader). However, since he testified that he received Mr. Bader's 9:15 message after 10:30 on September 9th, he cannot explain why the 9:15 message of the receptionist was not brought to his attention by 9:30. [I suggest that the times involved are contrived].

There is no explanation as to why Florence Dawson was not brought to the hearing. There is no explanation as to why, if the notation of the times of telephone calls was Ms. Dawson's idea how she knew that the call of Mr. Golub was "an internal call" and therefore did not have to record the time. Indeed, if the time recording was her own idea and she was just a temporary secretary, how did she know that Mr. Golub was a partner of Mr. Eno and that the time of this call was not to be recorded.

The further lack of candor is shown by the fact that Mr. Eno deliberately placed the words "LRE not available" on the call records after he knew that this record was to be used in court.

The record is further barren of any excuse for the conflict in the testimony of Mr. Eno that he "forgot what her(Ms. Dawson's) name was" and the statement now contained in the Eno January 30th,1975 affidavit stating what her name was. [I suggest that Mr. Eno knew her name all along and his failure to disclose the same was to prevent the League from being able to Subpoena this witness and obtain the actual facts.]

The record, even with the"clarifying" affidavit of January 30th,1975 of Mr. Eno, fails to set forth the name and address of the temporary agency. This, it is submitted, has been deliberately done to again mislead the Court. This also prevents the plaintiffs from obtaining verification from Ms. Dawson of the facts set forth in the Eno affidavit.

But the lack of candor with the Court does not even stop at this point. The defendant TOUCHE ROSS & COMPANY now question the Judge's notes. The Reply Memorandum claims that the notes

do not contain the single sentence "Knew on 9th that Sands said" but rather two sentences "Knew on 9th ..... Sands said". This interpretation is belied by the fact that there is a double arrow on the left side of the notes indicating a connection between the words involved. [Sands is obviously capitalized because it is a proper name].

Finally I wish to point out that one of the questions in the interrogatories of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE related to the membership list of the League. I am secretary of the League and control the membership list. Mr. Gordon does not. Thus it was necessary that I verify the answers to interrogatories relating to the membership list and Mr. Gordon could not.

WHEREFORE the undersigned prays that the Rule 37 application made by the defendant TOUCHE ROSS & COMPANY be in all respects denied.

Merrill Sands

Sworn to before me
this 4th day of February 1975

I. Walton Bader
Notary Public State of New York
No: 24-5140850
Qualified in New York County
Commission Expires March 30th, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

against

Civil Action
73 Civil 4133 LFM

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIRMATION OF I. WALTON BADER

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

The replying affidavit of LAWRENCE R. ENO dated January 30th, 1975 contains unique theories of law. It also raises far more questions than it answers.

The first of the defendant TOUCHE ROSS novel theories is the claim that a false affidavit can be submitted with impunity as long as it is "voluntarily" recanted at some point in the proceedings. The ENO affidavit of January 30th, 1975 does not state when during the proceedings it was "voluntarily discovered" that the affidavit was false. Certainly this fact must have been known prior to the final minutes of the three day hearings

conducted by the Court in this matter. Indeed the plaintiffs suggest that the falsity of the affidavit involved was known to the defendant TOUCHE ROSS prior to the commencement of the hearings in this matter but that this fact was deliberately kept from the Court until all of the testimony of the witnesses BADER, SANDS, BLACKER, NEVLING etc. was in in the hope that these witnesses might not have recalled that there were, in fact, two envelopes. Indeed, even now Mr. Eno is not candid with the Court in still suggesting that he still does not know which of the four sets of interrogatory answers was placed into each of the (now admitted) two envelopes. A check with the attorneys representing the other defendants in this action would have clearly revealed this, hence the statement by the TOUCHE ROSS defendant's attorney that he did not so check with these attorneys. In any event the testimony of SANDS is clear on the point as to what interrogatory answers went into what envelope.

The ENO affidavit now states what was not known at the time of the hearings, namely that he (ENO) did not make any written memorandum of the statements allegedly made by BADER at the hearing before the Court on September 20th, 1974. Apparently ENO relied on his memory for the so-called "memorandum" containing these statements. This was not clear from the testimony (TR.210) where Mr. Eno stated to the Court as follows:

> " * * * I listened quite intently to what Mr. Bader said to your Honor, and promptly, after returning to my office that day, I dictated a memorandum of what he said. * * *"

The obvious inference, therefore, was that Mr. Eno

had taken notes of what was said to the Court on that day. It is now stated, in a memorandum but not in an affidavit, that Mr. Eno made no notes of the statements purportedly made but that they were dictated from memory. Why this statement is not placed in the Jamuary 30th, 1975 affidavit is not clear.

In his testimony ENO stated that he had "forgotten" the name of the alleged temporary secretary to who the notes of telephone messages on September 9th, 1974. In his affidavit ENO gives the name as FLORENCE DAWSON, but, significantly, does not give her address or the name of the temporary agency from whom she was employed. Nor did Mr. Eno produce Ms. Dawson at the hearings (although he did produce his two employees with whom I purportedly spoke on September [illegible]th and 10th, 1974.)

In his affidavit ENO states that Ms. Dawson came on duty at 9:30 AM. This was fifteen minutes after receipt of the telephone call from Mr. Bader at 9:15 AM. ENO further states in his affidavit that the times placed against the telephone calls from Mr. Bader and Mr. Spanier were so done by Ms. Dawson and that he (Mr. Eno) gave no such instructions to Ms. Dawson. He further states that there is no time set forth against the call from "Mr. Golub" because it was an internal call.

It is interestimg to contrast ENO's testimony on this matter at the hearings (Tr. 205)

> Q. I mean there is "Incoming, Mr. Golub," or something like that, "Mr. Spanier," and "outgoing Mr. Bader,"
>
> A. I said everything that I have not identified as mine was in the handwriting of the substitute secretary.* * *"

There is nothing in the testimony to the effect that the call from Mr. Golub was an internal call nor is there any evidence of how Ms. Dawson, a temporary employee, would know that such a call was an internal call or that Mr. Golub was a partner of Mr. Eno's.

We also note that Mr. Eno, concededly, was with Ms. Dawson at 9:30 AM and must have spent some time with her to give her instructions for proceeding. Neverthless ENO admits that he did not receive word of Mr. Bader's 9:15 telephone call until after 10:37 AM.

We also note that while the record shows Mr. Bader's call as arriving at 10:37 AM Mr. Eno testified that it was received at 10:30 AM. Assuming that the conflict is an honest error it neverthless is sufficient to cast doubt upon what Mr. Eno recorded as purportedly occurred at the hearing on September 20th, 1974 before Judge Owen.

The attempt to mislead the Court with respect to the purported check that Mr. Eno made with the post office department (Paragraph III of the Eno affidavit of January 30th, 1975) is, it is submitted, sufficient to permit imposition of sanctions. This is not what Mr. Randolph says with respect to the mailing of the document and Mr. Eno knows it since he comments on the Randolph affidavit in his reply memorandum. Furthermore the person in the post office department with whom he checked is not identified in any manner. Such "evidence" is not even hearsay.

The Replying Memorandum of the defendant TOUCHE ROSS & COMPANY also claims that despite the proof that photocopies of documents had been supplied repeatedly to the attorneys for the defendant TOUCHE ROSS & COMPANY by the attorneys for the plaintiffs in this action the plaintiffs' attorneys still misrepresented in stating that they had "photocopies of the original answers." The use of the word "original" is supposed to clearly show the intent to deceive.

The answer, of course, is that an attorney will not send to an adverse party "photocopies of copies" but obviously will send photocopies of original documents. Thus, even if the word "original" were stated it would be entirely consistent with the facts in this case.

It must be noted, however, that BADER's testimony is not in accord with the above claim. BADER states that the ROSENMAN COLIN firm was told that they would receive copies of the answers. However, if the Court should find that the ROSENMAN COLIN testimony on this point is to be believed, it is pointed out that the requisite proof of misrepresentation is still not present.

Mr. Eno then goes on to contradict the Court's notes in his affidavit and states that the undersigned never told theCourt on September 20th, 1974 that Mr. Sands had been in his office on September 9th, 1974. Unfortunately, as I testified, I do not recall what occurred at this hearing and only have the Court's notes to refresh my recollection.

Mr. Eno than sates that there is bus service to LaGuardia airport every 15 minutes in the morning from the East Side Airline Terminal at 36th Street and First Avenue. This is as relevant as the alleged statement from the post office department that a letter mailed at 5:30 PM from a letter box in San Diego would not reach New York on September 5th, 1974 if mailed on September 3rd, 1974. My testimony was that I had an automobile and had driven to La Guardia Airport from Scarsdale New York on September 6th, 1974. However, it is my experience that, in the morning, the bus travel time from the East Side Airlines Terminal to Law Guardia Airport is closer to one hour than to one half hour. However between 39th Street and Madison Avenue and 36th Street and Madison Avenue are three street blocks and five avenue blocks. Normal walking time from my office to the Airline Terminal would be about thirty minutes. Assuming that the 9:15 call was made from my office, therefore, I could not have reached the street before 9:30 AM. Add 30 minutes walking time and my arrival at the Airlines Terminal would be about 10:AM. Assuming a departure on the 10:15 AM bus (and arrival at LaGuardia at, let us say 10:45AM) it would have been impossible to have made the 10:37 telephone call purportedly received by ROSENMAN COLIN.

458

There is, however, a more interesting fact concerning Ms. Dawson. According to Mr. Eno Ms. Dawson received my telephone call of 10:37 AM on September 9th, 1974. In my letter to the Court of September 11th, 1974 I stated that I had informed the Rosenman Colin firm with respect to the interrogatory answers involved. It is possible that the person at Rosenman Colin with whom I spoke could have been Ms. Dawson (if Mr. Eno is correct about the second call). Thus my testimony is again confirmed in all respects.

Mr. Eno then states, in his memorandum, that I have not been candid with the Court in stating the following:

> "* * * Finally the Court is advised that in Twenty-Seven years of practice before this Bar this is the first time that I have ever been accused of violations of the Rules of this Court and threatened with criminal contempt and disciplinary action.* * * (emphasis supplied)

Mr. Eno cites United Sheepllined Clothing Co., Inc. vs. Arctic Fur Cap Corp. 165 Fed. Supp. 193 as showing that I am no stranger to Rule 37 proceedings.

This case was decided in 1958 (about seventeen years ago). It primarily involved a fee dispute between myself and my client and involved my alleged failure to notify the client of the pendency of a deposition. Judge Dawson imposed expenses in this matter of $50.00. The significant part of the decision appears on page 194 and reads as follows:

> " * * He (Mr. Bader) admitted that he had not notified his client of the taking of the deposition. He stated that he had not appeared at the time set for the taking of the deposition, nor had he appeared on this motion, because of the fact that the defendant had told him it would not be able to pay him any fee * * * (emphasis supplied).

While I do not agree with Judge Dawson that I had any duty to the defendant in that case since he refused to pay a fee, this case is hardly one where I was threatened with criminal contempt or disciplinary action. I daresay that Mr. Eno, and his firm, have been involved in cases wherein Rule 37 costs and expenses have been imposed upon them in proceedings.

We now come to the real issue in this case which involves Rule 37 sanctions. Rule 37 relief in discovery proceedings are generally a matter of the Court's discretion. In the case at Bar, of course, if Rule 37 sanctions are to be imposed the Court must find (1) that the plaintiffs failed to answer interrogatories within the time allowed and (2) that the defendant TOUCHE ROSS & COMPANY was prejudiced by any delay and (3) that the answers are insufficient and wilfully insufficient. The Court can, of course, impose Rule 37 costs, expenses and attorneys fees if it finds that the conduct of the defendant prejudiced the plaintiffs.

In the instant case there is no question that the answers of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE were filed in time (and the defendant TOUCHE ROSS & COMPANY does not dispute this). The RANDOLPH affidavit, the post office correspondence and the SANDS testimony establishes, beyond a doubt, that the answers to interrogatories of RANDOLPH were received by the plaintiffs' attorney on September 5th, 1974. Thus, insofar as the plaintiffs INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH are concerned there is no question that Rule 37 sanctions are inappropriate.

It is further conceded that the knowledge that the MICHAEL and FAGAN answers to interrogatories were not received on September 5th, 1974 was known to the defendant TOUCHE ROSS &

COMPANY at least two days prior to the making of a Rule 37 motion. Thus Rule 37 sanctions are inappropriate as well in this case.

The MICHAEL answers, however, were received prior to the hearing on the defendant TOUCHE ROSS & COMPANY Rule 37 motion. Neverthless the Court denied the plaintiffs' motion for an extension of time and dismissed the Complaint as to MICHAEL. Where a Court dismisses a complaint under Rule 37 it cannot, in addition, impose costs and expenses.

Judge Brown, who is Chief Judge of the United States District Court for the Western District of Tennessee, and before whom, parenthetically, the undersigned tried a patent infringement matter which was decided against my client and, after the grant of certiorari by the Supreme Court of the United States, was affirmed by an equally divided Supreme Court, had the precise question before him in Armour & Co. vs Enenco Inc. 17 Fed Rules Serv. (2nd) 514 (1973) where the Court said:

> " * * * We conclude that, factually, these expenses are not caused by the involved misconduct and further that it would be unjust to award expenses here. Since we are herein ruling that Enenco is entitled to a judgment in its favor on all issues and since it does not appear that Enenco's expenses would have been any less had Armour cooperated in discovery and the litigation had proceeded to conclusion with Enenco prevailing, we cannot find that Enenco's expenses in any wise resulted from Armour's counsel's misconduct and we cannot find that it would be just to award expenses to Enenco.* * *"

Furthermore, in discovery matters, the granting of a default judgment by reason of the alleged failure to comply with discovery is very sparingly exercised. See, for example, Gill vs.

Stolow, 2Cir.,240 Fed.(2nd)669; Vac-Air, Inc. vs. John Mohr & Sons, Inc., 471 Fed.(2nd) 231 and GFI Computer Industries, Inc. vs. Fry, 476 Fed.(2nd) 1.

It is conceded that the record in this case shows no prejudice on the part of the defendant TOUCHE ROSS & COMPANY by reason of the late filing of the MICHAEL answers. The Court, on Setpember 20th, 1974, by reason of the non-filing of the FAGAN answers, dismissed the Complaint as to FAGAN. The RANDOLPH answers were duly served prior to the making of the Rule 37 motion by the defendant TOUCHE ROSS & COMPANY and subsequent to the making of a motion by the plaintiffs for an extension of time with respect to the MICHAEL and FAGAN answers. Thus AT THE TIME OF THE HEARINGS HELD WHICH WERE SPECIFICALLY DIRECTED TO THE DATE OF RECEIPT OF THE RANDOLPH ANSWERS IN THE OFFICE OF THE ATTORNEY FOR THE PLAINTIFFS THE RANDOLPH ANSWERS HAD ALREADY BEEN IN THE DEFENDANT TOUCHE ROSS' HANDS FOR A CONSIDERABLE PERIOD AND THESE ANSWERS WERE IN THE HANDS OF THEIR ATTORNEYS PRIOR TO THE MAKING BY THEM OF THE RULE 37 MOTION.

Generally, if the Court grants judgment against a party, it will not award expenses as well (Cf. Armour & Co. vs Enenco, Inc., supra). However, with respect to RANDOLPH, the record is clear that these answers were received by the plaintiffs' attorneys on September 5th, 1974. Also, in this case, there is a conceded false affidavit made by the defendant TOUCHE ROSS' attorney with respect to the number of envelopes in which the answers were received. There is also considerable evidence by the defendant TOUCHE ROSS' conduct in these proceedings of lack of candor with the Court. Hence, it is submitted, if expenses are to be imposed upon any party they should be imposed upon the defendant TOUCHE ROSS (but the expenses

should be limited to the costs, expenses and attorneys fees incurred by the plaintiffs from the date of commencement of the hearings in this matter forward.

Dated : February 10th, 1975

I. Walton Bader

sent an umpire. This umpire must, of course, consider very carefully whether it is, in the light of the agreement between the parties and the provisions of the trust instrument, appropriate and proper for the motion to be adopted or defeated.

The motion is granted. The Court hereby appoints Harold Harper, Esq., 70 Pine Street, New York, N. Y., as an impartial umpire, and directs, in accordance with agreement of the parties in open court, that his compensation for serving as such shall be determined by the Court. So ordered.

UNITED SHEEPLINED CLOTHING CO., Inc., Plaintiff,

v.

ARCTIC FUR CAP CORP., Defendant.

United States District Court
S. D. New York.
Sept. 9, 1958.

Proceedings on motion for order striking out amended answer and counterclaim of defendant and entering judgment by default for plaintiff. The District Court, Dawson, J., held that since defendant's failure to appear had been due to neglect of attorney rather than to any unwillingness on part of defendant to appear for deposition, it would be unfair to defendant to dismiss answer and counterclaim and enter default judgment, but held that, as a condition of denial of plaintiff's motion to strike out answer and enter judgment by default, defendant's attorney would be required to pay to plaintiff reasonable expenses incurred in securing appearance of defendant for taking of deposition, including attorney's fees.

Order accordingly.

Federal Civil Procedure ⇐1151

Where defendant's failure to appear was due to neglect of attorney rather than to any unwillingness on part of defendant to appear for deposition, it would be unfair to defendant to dismiss answer and counterclaim and enter default judgment; but, as a condition of denial of plaintiff's motion to strike out answer and enter judgment by default, defendant's attorney would be required to pay to plaintiff reasonable expenses incurred in securing appearance of defendant for taking of deposition, including attorney's fees.

Henry L. Burkitt, New York City, for plaintiff.

Bader & Bader, New York City, for defendant. I. Walton Bader, New York City, of counsel.

DAWSON, District Judge.

This is a motion for an order striking out the amended answer and counterclaim of the defendant and entering judgment by default for plaintiff, and for costs and expenses, including reasonable attorney's fees, for plaintiff. The motion is based on the failure of the defendant to appear on the date set for the taking of its deposition.

It appears that on June 24, 1958, Judge Palmieri entered an order which provided:

> "Plaintiff's application to take defendant's deposition granted. Deposition to be completed in 90 days."

Thereafter, in accordance with this order, notice for the taking of defendant's deposition by the president of the defendant corporation was served by the plaintiff, with notice that the deposition would be taken on July 31, 1958. On the date set for the taking of the deposition the president of the defendant did not appear and his default was duly noted.

On the return of this motion defendant's attorney did not appear. However his client, the president of the defendant company, did appear. He admitted that he had not appeared on the date set for

BEST COPY AVAILABLE

464

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JAN 26 1976
S.D. OF N.Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,etc.

Plaintiff

against

TELEPROMPTER CORPORATION

Defendant

---

73 civ 4133
L.F.M.

MICROFILM
JAN 2

STIPULATION OF SUBSTITUTION OF ATTORNEYS

IT IS HEREBY STIPULATED that ARTHUR KASS,Esq, of Croton Falls, New York be, and he hereby is, substituted for BADER and BADER,Esqs.,274 Madison Avenue, New York,N.Y. as attorney for the plaintiff herein.

Dated: October 13th;1974

I.Walton Bader
BADER and BADER
Attorneys for Plaintiff
274 Madison Avenue
New York,N.Y. 10016

Arthur Kass
Croton Falls, New York

INDEPENDENT INVESTOR PROTECTIV LEAGUE

by Merrill Sands
Merrill Sands
Secretary

SO ORDERED 1-23 76
U.S.D.J.

SO ORDERED: 10-17-1974
U.S.D.J.

STATE OF NEW YORK
COUNTY OF WESTCHESTER

465

Before me personally appeared MERRILL BARDS, by me being duly sworn, who did depose and say that he is the Secretary of INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated association of 19 West 24th Street, New York, N.Y. who signed the foregoing instrument in my presence and acknowledged that he did so as his free act and deed and by authority of the Board of Directors of said association, on this 12th day of October 1974.

L. Walton Bader
Notary Public

WALTON BADER
PUBLIC, STATE OF NEW YORK
No. 24-5140850
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN [illegible] OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiff

466

against

TELEPROMPTER CORPORATION

Defendant

AFFIRMATION OF I.WALTON BADER
CONCERNING SUBSTITUTION OF
ATTORNEYS

STATE OF NEW YORK

COUNTY OF NEW YORK

I.WALTON BADER, affirms the following under penalties of perjury. The undersigned, being a member of the Bar of the State of New York, this affirmation has the force of an affidavit under the laws of the State of New York.

Rule 4(c) of the General Rules of this Court require that an affidavit be submitted with respect to any substitution application and the present posture of the case. Such facts are set forth hereinbelow.

Irreconcilable conflicts have arisen between the undersigned and Mr. Merrill Sands, who is the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE. Mr. Sands, at various times, has refused to follow the advice that I gave to him

467

in connection with this action. Hence, it has been mutually agreed that the undersigned be substituted in this actinn.

There are no outstanding fees due the undersigned herein.

This action, in combination with approximately seven (7) similar actions have been consolidated before Judge Mac Mahon of this Court, a consolidated complaint will be shortly filed, and Mr. PHILIP JONES has been appointed General Counsel for all actions by Judge Mac Mahon. Insofar as the undersigned is aware this case is not on any calendar for trial at the present time.

There is a pending Rule 37 motion in this action before Judge Owen which has not yet been fully decided.

Dated : October 12th, 1974

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

468

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

73 Civil 4133 (PC)

AFFIDAVIT

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

In their papers in response to the memorandum submitted by defendant Touche Ross & Co. ("Touche Ross") on this motion under FRCP Rule 37, plaintiffs have made contentions and accusations not supported by facts in the record. If those contentions and accusations are to be considered by the Court, then this affidavit places in the record facts demonstrating the lack of substance to those contentions and accusations. The facts set forth herein appear in context in Touche Ross' Reply Memorandum submitted herewith. Thus, the statements contained herein take on meaning and relevance when considered in that Reply Memorandum.

I

On September 9, 1974, my regular secretary, Mrs. Muriel Kresh, was absent. My office secured a temporary secretary for me for the day from an outside agency. Our

office records show that her name was Florence Dawson. Ms. Dawson came on duty at about 9:30 A.M. I asked her to keep a record of my incoming and outgoing calls; and made up the form of the log for her (Exh. Q). The words on Exh. Q, "Mon. Sept. 9, 1974 Incoming Outgoing" are in my handwriting; and the words "IRE not available" are also in my handwriting and were placed on the log by me sometime later to show that I had not received the 10:37 A.M. call from Mr. Bader. The rest of the handwriting on the log is Ms. Dawson's. I did not tell Ms. Dawson to record the time of incoming calls: she did that on her own except for the call from Mr. Golub (which was an internal call since he is a partner of mine).

The call from Mr. Bader at 9:15 A.M. on September 9, 1974 was received by Ms. Rosalind Rosen, who is not a secretary in our office but who is a receptionist. Ms. Rosen testified at the hearing (Tr. 145-6). Since that call was not taken by Ms. Dawson, it is not on the log she kept.

Mr. Bader's 10:37 A.M. call to our office was received by Ms. Dawson while I was in conference elsewhere in my office. When I returned to my room, Ms. Dawson told me of that call. I asked her to return the call to Mr. Bader at his office and she told me that she could not reach him.

These facts substantially appear in my testimony at Tr. 204-206.

II

My office has checked with Carey Transportation and has been informed by them that in the mornings, including

the morning of September 9, 1974, they run buses from the East Side Airlines Terminal at 37th Street and 1st Avenue to La Guardia Airport every 15 minutes and that the buses arrive at La Guardia about one-half hour after departure. On September 9, Mr. Bader's office was at 274 Madison Avenue, which is between 39th and 40th Streets and Madison Avenue.

III

My office has checked with the Post Office Department and has been advised that an air-mail letter deposited in a letter-box in San Diego, California after 5:30 P.M. on September 3, 1974 would not have been delivered in New York on September 5, 1974.

IV

On the argument before the Court on September 20, 1974, Mr. Bader made no statement that Mr. Sands had been in his office on September 9, 1974. That claim was first made when they so testified at the hearing on November 4, 1974.

V

My firm represented Touche Ross in matters long before the instant suit, or any related suit, involving Teleprompter Corp. ("Teleprompter") was brought; our firm has continued to represent Touche Ross in numerous matters [illegible] connected with Teleprompter; the firm of Shea Gould Climenko & Kramer is not Outside General Counsel for Touche Ross; and that firm had nothing to do with our retainer by Touche Ross.

Sworn to before me this
30th day of January, 1975.

Marlene Herman
Notary Public

Lawrence R. Eno
LAWRENCE R. ENO

MARLENE HERMAN
Notary Public, State of New York
No. 41-6867365
Qualified in Queens County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,	471
Plaintiffs,	73 Civ. 4133 (RO)
-against-	
TELEPROMPTER CORP. et al.,	ORDER
Defendants.	

Defendant Touche Ross & Co. having moved by order to show cause dated September 23, 1974 for an order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, staying plaintiffs' discovery and extending said defendant's time to object to plaintiffs' demand for production of documents and interrogatories, and plaintiffs having consented to said motion, it is

ORDERED that all discovery by plaintiffs be and the same hereby is stayed until 30 days after the expiration of the time of defendants to answer or move with respect to the amended complaint; and it is further

ORDERED that the time of defendant Touche Ross & Co. to object to (a) plaintiffs' notice for the deposition of said defendant on September 30, 1974, and the demand for the production of documents therein contained, and (b) plaintiffs' interrogatories dated September 11, 1974 (and any other interrogatories plaintiffs deem outstanding), be and the same hereby is extended to 30 days after the expiration of the time of defendants to answer or move with respect to the

amended complaint.

Dated: New York, New York
October , 1974.

U.S.D.J.

CONSENTED TO:

BADER & BADER, ESQS.

By _____
A Member of the Firm
Attorneys for Plaintiffs

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL, ESQS.

By _____
A Member of the Firm
Attorneys for defendant Touche Ross & Co.

LEXINGTON 2-6860
6861

473

CABLE ADDRESS "BAPATENTS" NEW
TELEX "ITT 424094"

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

473

September 27th, 1974

Postal Information
General Post Office
8th Avenue & 33rd Street
New York NY 10001

Gentlemen,

I would appreciate the following information:

1- I believe that at postal station 10016 (delivery address 274 Madison Avenue, New York, N.Y.) there are three postal deliveries at about 8:30 AM, 10:00 AM and 3:00 PM.

2- It would be entirely possible for a letter posted in San Diego California (Via Air Mail) on September 3rd, 1974 to reach 274 Madison Avenue New York NY at the 3PM delivery.

Would you please confirm the above by letter if these facts are correct.

Respectfully,

I. Walton Bader

IWB/ck

PLAINTIFF

EXAMINED
U. S. Dist. Court
S. D. of N. Y.

PLTF.
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
1a

474

UNITED STATES POST OFFICE

New York, NY 10001

DATE: October 15, 1974

P.O.CL:

TO:

Mr. I. Walton Bader
Bader and Bader
274 Madison Avenue
New York, N.Y. 10016

Dear Mr. Bader:

This is with reference to your communication of September 26, 1974 concerning delivery of mail for the above location.

Report received from the Manager, Delivery and Collection indicates that you are scheduled for delivery between 7:45 to 9:30 AM, 10:30 AM to 12:30 PM and 1:15 PM to 2:30 PM.

Concerning the air mail letter deposited in San Diego, Ca. on September 3rd, according to service standards of the US Postal Service the article in question would be probably delivered on September 5th, on the first trip.

I trust this information will be of assistance to you.

Sincerely,

John R. Strachan
Postmaster

By Herman Feuerberg

Complaints Officer

475

Plaintiff's Exhibit 3
In Evidence

029 016 730 3 800AX

WALTON BADER THRU 58

Approval Code

Service Establishment

Date of Charge

9 7 74

Merchandise/Services

Taxes

Tips/Misc

Total

Any delayed charges are entered below

Type of Delayed Chg

Amt. of Delayed Chg

Revised Total

Amexco Use Only

Equivalent Amt

Establishment agrees to transmit to American Express Company (Amexco) or Authorized Representative for payment. Merchandise and/or service purchased on this card shall not be resold or returned for cash refund

Cardmember Signature

X

Invoice Number

493738

Amexco Copy

0000"000000 16 13"

029 016 730 3 800AX

WALTON BADER THRU 58

Approval Code

Service Establishment

Date of Charge

9 10 74

Merchandise/Services

Taxes

Tips/Misc

Total

Any delayed charges are entered below

Type of Delayed Chg

Amt. of Delayed Chg

Revised Total

Amexco Use Only

Equivalent Amt

Establishment agrees to transmit to American Express Company (Amexco) or Authorized Representative for payment. Merchandise and/or service purchased on this card shall not be resold or returned for cash refund

Cardmember Signature

X

Invoice Number

296538

Amexco Copy

0000"000000 22 20"

BEST COPY AVAILABLE

OFFICE COPY
SERVED 9/5
RECEIVED 9/6/71
FILED IN CLERK'S
D & E JK

476

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 Civil 4133
(RO)

----------x

FURTHER ANSWERS TO FIRST INTERROGATORIES OF THE DEFENDANT TOUCHE, ROSS & CO.

The following further Answers are submitted to the First Interrogatories of the Defendant TOUCHE, ROSS & CO. These Answers are alleged on information and belief and are based upon the records kept by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE:

2. State the names and addresses of the members of the IIPL.

Answer: The IIPL keeps a list of its' Members on a set of index cards. Submitted with the Answers to these interrogatories, are photocopies of the index cards showing

the Names and Addresses of the present Members of the IIPL.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: In addition to the Names and Addresses previously given, the following Name and Address is to be added:

SADIE MOSNER

3133 Brighton 7th Street

Brooklyn, N. Y. 11235

5. With respect to each member listed in response to interrogatory 4, state (a) (I) the date when such member first purchased shares of stock ("shares") of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) (I) the date of each subsequent purchase by such member of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each purchase, (c) (I) the date of each sale by such member of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by

478

each such member, and (e) in each instance the name in which the shares were or are held.

Answer: (See below)

NAME OF MEMBER	DATE OF PURCHASE	NO. OF SHARES PURCHASED	PRICE PER SHARE PAID
SADIE MOSNER	Jan., 1973	25	25.00
ROSE L. GROSS	Oct., 1971	8 (now 32)	72.80
"	May 16, 1972	33	36.60
"	May 13, 1972	50	34.50
G. DIXON MAHON	Jan. 15, 1973	900	30.205
ROBERT W. STODDARD	Sept. 5, 1973	100	8.50
JOHN C. BERNIUS	Aug. 10, 1973	100	13.50
SYLVIA K. FRENCH	March 24, 1972	150	28.50
	Dec. 28, 1971	50	28.50
MICHAEL FAGAN	March 10, 1972	50	29-7/8
GARY MICHAEL	April 1, 1972	100	30.00
MARTIN F. RANDOLPH, JR.	Feb., 1972	25 (now 100)	140-3/4
	Jan. 8, 1973	100	29-7/8
	Jan. 15, 1973	200	28-3/8
	Feb., 1973	200	24-1/2

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
MARTIN F. RANDOLPH, JR.	Aug. 10, 1973	400	13-1/2
	Sept. 5, 1973	400	9-1/2
	Nov. 12, 1973	200	4-3/4
G. DIXON MAHON	Nov. 29, 1973	900	4.125

Dated: September 5, 1974

Yours, etc.

BADER and BADER
Attorneys for the Plaintiffs

TO: ALL OF THE ATTORNEYS AFFECTED BY SAME

By: _____
I. Walton Bader

274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860

V E R I F I C A T I O N

STATE OF: NEW YORK)
) ss.:
COUNTY OF: NEW YORK)

MERRILL SANDS, being duly sworn, deposes and says that he is the Secretary of the Independent Investor Protective League, an Unincorporated Association; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

(S) Merrill Sands
Merrill Sands

SWORN TO BEFORE ME
THIS _____DAY OF
SEPTEMBER, 1974.

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on September 5, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

Mr. David D. Ackerman
1522 Bryant Ave.
Bronx, N.Y. 10460

Mr. Alan M. Ades
10 West 33 St.
N.Y. N.Y. 10001

482

Mr. Joseph V. Allen
2682 Country Club Blvd.
Cleveland, Ohio 44115

Mr. Ray Alpert
2 Ellwood St.
N.Y. N.Y. 10040

Mrs. Gertrude Andaven
636 Brooklyn Ave.
Brooklyn, N.Y. 11203

Mr. Benjamin Arac
18 Tremont St.
Boston, Mass. 02109

BEST COPY AVAILABLE

Mr. Jack B. Backer
998 East Market St.
Akron, Ohio 44305

Dr. Arthur Baer
919 The Alameda
Berkeley, Calif. 94707

John N. Bancroft JR.
215 Barnwell Ave.
Aiken, South Carolina29801

484

Mrs. Emily Beets
9-07 149th St.
Whitestone, L.I.
N.Y. 11357

M.N. Beitman
1760 Balson Road
Highland Park, ILL. 60035

Mr. Lewis Bellin
Beacon Hotel
75th St. on Broadway
N.Y. N.Y.

Mr. Otto E. Bent
22627 Clarendon St.
Woodland Hills, Calif. 91364

485

Mr. John C. Bernius
116 Lincoln Ave.
Sayville, Long Island
N.Y. N.Y. 11796

Mr. Mel Bickford
3719 Arthur Ave. North
Seaford, L.I.,
N.Y. 11783

D. Bindner
P.O. Box 99
Pelham, N.Y.

Mr. Matthew R. Birk
90-13 68th St.
Forest Hills N.Y. 11375

486

S.D. Bolger
Palmer Associates
15 West 11 St.
N.Y.NY. 10011

Mr. Elmer J. Bonyko
1435 Prince Charles Ave.
Westlake, Ohio 44145

Miss Irma H. Brannan
1102 Home Ave.
Fort Wayne, Indianna 46807

A. G. Brotze
150 East 69 St.
Apt. 9D
N.Y. N.Y. 10021

487

Mr. Gerald Brumm
4730 South Kolin Ave.
Chicago, Ill. 60632

Mr. William C. Buck
937 North Miller Drive
Tucson, Arizona 85710

Mr. William G. Buck
% Hornblower Weeks
3777 East Broadway
Tucson, Arizona

Ann Burns
141-25 Northern Blvd.
Flushing, N.Y.

BEST COPY AVAILABLE

488

Mr. Harry Burns
141-25 Northern Blvd.
Flushing, N.Y.

C

Mr. Philip Cohen
1345 Boxwood Drive East
Hewlett Harbor, N.Y. 11557

Mr. William Copses
880 South Pine St.
Spartanburg, South Carolina

Mr. Jerome Kent
1111 Crandon Boulevard
Key Biscayne Florida 33149

Frank Fisher
Box 265
Santa Clara California 95052

490

J.T. CARPENTER
P.O. Box 311
Ponte Vedra Beach, Fla. 32082

R.L. Watt
1308 Hull Street
Ruston La. 71270

C.R? Orman
2335A Bellamy Circle
Charleston, S.C.

Mildred J. Ellison
354 S. Stonehedge Drive
Columbia S.C. 29210

491

C. Dean Ellison
354 S. Stonehedge Drive
Columbia S.C. 29210

J.H. JOHNSON
14 Coach Lane
Exton, Penn. 19341

Neil A. Wright
2503 Douglas Drive
Bossier City La. 71010

Johnson, Mrs. H.H.
2505 Douglas Drive
Bossier City, La. 71010

493

Mr. Theodore Cot
328 Manchester Rd.
Ridgewood, New Jersey 07450

Harvey Cowen
98-32 57th Ave.
LeFrak Cith

Mr. Harvey Cowen
98-32 57th Ave.
LeFrak City
Elmhurst, N.Y. 11368

Mr. Dominick Cifiodelli
747 Adams Ave.
Elizabeth, New Jersey 07201

Mr. Isaac Cooper
6 South Dean St.
Englewood, New Jersey 07631
Tel. 201-568-7953

Mr. William Carlson
749 Logan Ave.
Bronx, N.Y. 10465

Mr. Mortimer J. Constantine
Suite 505
1117 St. Catherine Street West
Montreal, 110, Quebec Canada
Tel. 514-849-8111

D

Mr. James L. DePalma Jr.
1001 Jefferson Ave.
Rahway, New Jersey 07065

H. Robert Dysboff
860 Park Lane
Valley Stream, N.Y. 11580

Mr. Mario DiGiovanni
43 Carmen St.
New York,N.Y. 10014

Mr. Ralph DeBasio
290 6th Ave.
N.Y. N.Y. 10014

Mr. Lawrence E. deNevfuille
16 Hunter Drive
West Hartford, Conn. 06107

Mr. Anthony F. DeLa Pena
2915 Winthrop Rd.
Shaker Heights, Ohio 44120

Mr. Gregory D'Alessio
8 Henderson Place
New York, N.Y. 10028

Joan Davidson
723 West Shore Trail
Sparta, New Jersey 07871

497

Mr. Benjamin P. Davidson
& 723 West Shore Trail
Sparta New Jersey 07871

Mr. Edgar Debany
42 Oliver St.
Brooklyn, N.Y. 11209

Mr. William B. Drake
P.O. Box 3372
San Francisco, Calif. 94119

Bill T. Diangikes
880 South Pine St.
Spartenburg, S.C.

858

94119
San Francisco, Calif.
P.O. Box 3372
Mr. William B. Drake Jr.

Mr. Joseph Dannhauser
190 Claremont Rd.
Franklin Park, New Jersey 08823

Lillian Dudeminer
60 Parkway Drive East
East Orange, New Jersey
07017

499

Mr. David Elliot
118 West 79 St.
N.Y. N. Y. 10024

F

Michael P. Fagan
Watson Lane
Danbury Conn.

Mr. John L. Finlay
287 Riverside Ave.
Westpory, Conn. 06880

560

Mr. Robert D. Freed
104 Mt. Airy Rd.
Bernardsville, New Jersey
07924

Mr. William Friedman
100 Waverly Rd.
Scarsdale, N.Y. 10563

Mrs. James Feldman
9202 Venetian Hwy.
Richmond, Va. 23229

Mr. John Flanagan
85-15 144th St.
Jamaica, N.Y. 11435

501

Lenny Freeman
19-65 211th St.
Bayside N.Y. 11360

Marrus Fleischman
166 Rodney St.
Brooklyn, N.Y.

Sylvia K. French
1100 Park Ave. N.Y. N.Y.

502

Miriam H. Girsh
2101 Chestnut St.
Philadelphia, Penn.
19103

Leona Gale
P.O. Box 770
Ashland, Oregon

Mr. George Green
520 Merritt Ave.
Apt. E
Oakland, Calif. 94610

Mr. Ronald Gehlhoff
2815 Wildwood Lane
Stevensville, Mich.
49127

503

Mrs. Rose L. Gross
3099 Brighton 6th St.
Brooklyn, N.Y.
11235

MRS. GERTRUDE GOLDMAN
88-43 74th Avenue
~~X~~ Glendale N.Y.

Ancil Gordon
95 West Third Street
Freeport NY 11520

RICHARD A. GORDON
95 West Third Street
Freeport N.Y. 11520

504

Gumersell Properties, Inc.
383 Park St.
Montclair, New Jersey
07043

Archie Goldhor
942 East 9th St.
Brooklyn, New York
11230

Mr. Joe L. Griffith
4612 Amesburg
Apt. 183
Dallas, Texas 75206

I H

505

Mr. David W. Hagele
1810 Elmwood Ave.
Berwyn, Ill. 60402

Mr. David C. Hamilton
P.O. Box 2068
Palos Verdes Peninsula
Calif. 90274

Mr. Jack Hirsh
1901 Walnut St.
Phil. Penn.
19103

Mr. Bernard H. Hoffman
532 West 22 St.
N.Y. N.Y.
10011

506

ARTHUR HOFFMAN
12 Landau Avenue
Elmont N.Y.

HELEN HOFFMAN
12 Landau Avenue
Elmont N.Y.

Mr. Anthony G. Hoogen
6031 West Roching Circle
Tucson, Arizona
85713

L. M. Heineman
P.O. Box 836
Hawthorne, Calif.
90250

507

Moe Helft
3180 South Ocean Drive
Hallondale, Florida
33009

Mr. Richard A. Hovchin
2619 Washington Blvd.
Marina Del Ray, Calif.
90291

Mr. Hochster
15 Spier Ave.
Allenhurst, New Yersey
07711

Mr. David Hatfield
Northwest Corner Rd.
Norwich, Conn.
06360

508

M.J. Hatfield
Botsford Hill Rd. R-2
Newtown, Conn.
06470

Mr. Philip S. Horowitz
1073 Hopkinson Ave.
Brooklyn, N.Y.
11236

I

Irene Johnson
86-15 Broad St.
Elmhurst, N.Y.
11373

Mr. Morton Jarashow
4-39 2nd St.
Fairlawn, N.J. 07410

Turnbull- Gumersell- Davidson- Jones
383 Park St.
Upper Montclair, New Jersey

Mr. Victor Kurtz
60 West 57th St.
N.Y. N.Y.

Marsha Kroll
The Nerwork Project
104 Earl Hall
Columbia University
N.Y. N.Y. 10027
Tel. 2805113
2805114
2805115

Mr. Robert W. Keller
% Innonation Network Corp.
80 Broad St.
N.Y. N.Y.
10004

511

Mr. Irving L. Kaplan
24549 Hawthorne Drive
Beachwood, Ohio
44122

Jerome Kline
315 East 86th St.
Apt. 17 H/E
N.Y. N.Y. 10028

Mr. James M. Keane
1109 Rosewood Way
Alameda, Calif.
94501

Mr. John Kennedy
73 Ally Court
Brooklyn, N.Y.
11229

512

Miss Lillian Koevick
75 Henry St.
Brooklyn, N.Y.
11201

Mr. James Keen
160 Riverside Drive
N.Y. N.Y.
11024

Tel. 787-3282

Mr. Jerome Klein
315 East 86th St.
N.Y. N.Y.

Mel Kronish
23 Elves Lane
Levitown, L.I.
N.Y. 11756

513

Ruth L. Kaufman
Joseph Kaufman
200 Dogwood Rd.
Valley Stream, NY N. Y.
11580

Mr. Abramham J. Klein
460 Neptune Ave.
Brooklyn, N.Y.
11224

Stefan Kirpan Jn. & Veronica Kirpan
660 Rahway New Jersey
07065

L

514

CLAIRE LANG
652 Sagamore Avenue
Teaneck N.J. 07660

Henry Lang
652 Sagamore Avenue
Teaneck N.J. 07660

Robert B. Lavle
13618 East River Rd.
Columbia Station, Ohio
44028

Carl Levander
150 Butternut Lane
Stamford, Conn.

515

Charles J. Lillin
19 West 24th Street
New York, N.Y.

Mr. Leonard Loren
300 East 40th St.
N.Y. N.Y.

Janice Liberman
151 Tremont St.
Boston, Mass.
02111

Mr. George Le Van
One Lafayette Plaisance #1107
Detroit, Mich. 48207

516

Mr. Arthur B. Lewis
21 River St.
Woodstock, Vt.
05091

Mr. George E. Lewis
P.O. Box 27
Lebanon, Tenn.
38087

Mc

M

517

John F. Magda
3023 Ave. T
Brooklyn, N.Y.
11229

Alvin Martz
2 Horizan Rd.
Fort Lee, New Jersey
07024

Ethel Martz
1740 Ocean Ave.
Brooklyn, N.Y.

Miss. Veronica Maskuiwicz
175 Baldwin Park
Bloomfield, New Jersey
07003

518

Mr. & Mrs. Thomas Marcus
17090 N.E. 14th St.
Apt. 215
NorthMiami Beach, Fla.
33162

Mrs. S. Mosner
3133 Brighton 7th St.
Brooklyn, N.Y.
11235

Mr. Edward Michaelc Murraine
61 Hamilton Place
N.Y. N.Y.
10031

G. Dixon Mahon
District Attorney
P.O. Drawer 940
Ozona, Texas
76943

519

Mr. Anthony A. Manheim
30 Broad St.
N.Y. N.Y.

Dr. Robert G. Morris
25874 Hatton Rd.
Carmel, Calif. 93921

Irvin Meiseler
3153 Camden Lane
Merrick, N.Y.

Charlotte K. Michel
40-04 Bowne St.
Flushing, N.Y.
11354

521

MARY NADLER
217 Mt. Eden Avenue
Bronx N.Y.

Mr. Edward A. Neff
% Phoenix Trimming Co.
2000 North Racine Ave.
Chicago, Ill.
60674

Mr. David Nawroci
447 East 65 St.
Apt. 2E
N.Y. N.Y.
10021

Mr. Wendell A. Nelson
2823 Clanemont Pl. N. E.
Albugueque, N.M.
87110

542

Mr. M.V. McLaughlin
55-03 31st St.
Woodside, N.Y.
11377

0

C. Michael O'Shea
1516 S. Prospect Ave.
Park Ridge, Ill.
60068

Arthur S. Osterburg
Alma M. Osterburg
915-84St.
Brooklyn, N.Y.
11?28

I.D. PuHerman
1094 New York Ave.
Brooklyn, N.Y. 11203

A. Porter
685 East 14 St.
N.Y. N.Y. 10009

Don Price
P.O. Box 663
FDR Station
N.Y. N.Y. 10022

524

Helen Papajohn
685 Fort Washington Ave.
N.Y. N.Y. 11040

Mr. J. P. Pergantes
1444 Dunkirk Rd.
Montreal 305, P.Q.
Canada

Q

525

Bernard M. Rosenweig
49 West 45 St.
N.Y. N.Y. 10036

James L. Rosenzweig
60 Bishop St.
New Haven, Conn.

Mary Rodolico
386 Ocean Parkway
Brooklyn, N.Y. 11218

Philip Ransom
267 North St.
Buffalo, N.Y.14201

526

Jack Rosenberg
1170 Brighton Beach Ave.
Brooklyn, N.Y. 11235

John F. Richards
7941 Salem Rd.
Salem, Mich. 48175

SAMUEL ROSEN
2840 Sedgewick Avenue
Bronx N.Y.

HELEN ROSEN
2840 Sedgewick Avenue
Bronx N.Y.

527

Mr. Irving Rosenbaum
101 West 30 St.
Apt. 300
N.Y. N.Y.

Mr. Jack Rublin
425 West 23 St.
N.Y. N.Y. 10011

Bernard Rosenzweig
21 Carthage Lane
Scarsdale, N.Y. 10583

George Rokos
39-73 Ralph St.
South Seaford, N.Y.

528

Emanuel Rappaport
2740 Green St.
San Francisco, Calif. 94123

Ester Ribler
&
Manuel Ribler
210 East 181 St.
Bronx, N.Y. 10457

Arthur Rosenbaum
225 Broadway
N.Y. N.Y.

Mildred Rosenbaum
1655 Flatbush Ave.
Brooklyn, N:Y.

529

Murray Rubenstein
215 East 68 St.
N.Y. N.Y. 10021

S

Dorothy Sands
Pritton Hill Road
Brookfield Center Conn.

MERRIL R. SANDS
Pritton Hill Road
Broofkield Center Conn.

BEST COPY AVAILABLE

530

Mrs. Rose Sands
Beech Tree Road
Brookfield Center Conn. 06805

Bernard Segal
150-6 South Driesen Loop
Bronx, N.Y.
10475

Joan Schaefer
107 Lebrun Rd.
Buffalo, N.Y.
74215

P. Schonfield
377 S. Harrison St.
East Orange, New Jersey
07018

531

Morton Shor
5 East Bourne Drive
Spring Valley, N.Y.
10977

Alan Shaw
75 Everett Pl.
Plainfield, New Jersey
07063

Tony Sansone
107 27th Ave.
Brooklyn, N.Y. 11412

Mr. Victor Sayegh
59-88th St.
Brooklyn, N.Y. 11209

532

Saymode Inc.
43 Hall St.
Brooklyn, N.Y.
11205

BEATRICE SCHWARTZ
88-43 74th Avenue
~~Glendale N.Y.~~
~~XXXXXXXXXXXX~~
Glendale N.Y.

Michael Spiekermann
34-25 150th Place
Flusihing, New York

Mr. Robert W. Stoddard
108 Cherry Ave.
W. Sayville, L.I.
N.Y. 11796

533

Mr. Joseph Scozzafava Jr.
79 Clapboard Rigde Rd.
Danbury, Conn. 06810

Donald A. Statlord
10 South LaSalle St.
Chicago, Ill.

Mr. & Mrs. W. Sarte
1090 Carolan Ave. #201
Burlingame Calif. 94010

George Splinder
29-54 143 St.
Flushing, N.Y. 11354

534

Mr. Robert Stevens
2225 West 106 St.
Chicago, Ill. 60643

William Sante
6140 Canterbury Dr. #6-210
Culver City, Calif. 90230

David Schlorn
64 Bay 28th ST.
Brooklyn, N.Y.
11214

Dr. Sol Stein
355 Whitman Dr.
Brooklyn N.Y.
Tel Hi4-5568 SH3-2619

EDDIE L. THOMPSON, Jr.
Inman South Carolina

Ms. T. Treaftis
5552 Netherland Ave.
Riverdale, N.Y. 10471

Frieda Tepper
3215 Netherland Ave.
Bronx, N.Y. 10463

536

Mr. Elliott Tepperman
365 Easr Penn St.
Long Beach, N.Y. 11561

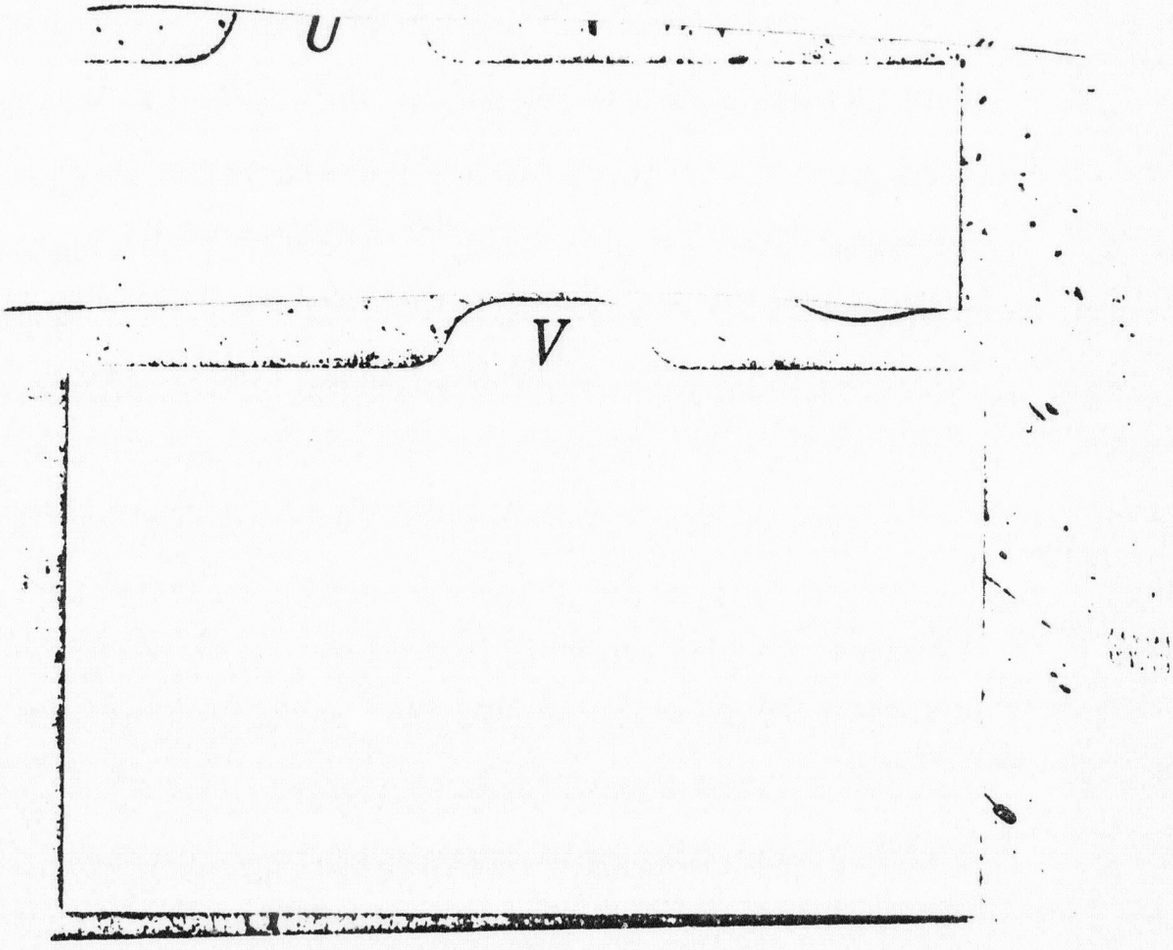
SARAH S. TROMMER
88-43 74th Avenue
Glendale N.Y.

Trustees of Saymode, Inc.
Profit Sharing Plan
43 Hall St.
Brooklyn, N.Y. 11205

Trustees of Lisanne,Inc.
Profit Sharing Plan
43 Hall St.
Brooklyn N.Y. 11205

537

A.E. Yillman
45 Sprague St.
Malden, Mass



Paul Valentine &
Anna Valentine
1019 Mile Square Rd.
Yonkers N.Y. 10704

538

Richard F. Volpe
19400 Riverside Dr.
Birmingham, Mich.
48009

J. N. Veneman
28860 South Field
Lathrup Village Mich. 48075

Mrs JEWELL WIESEN
Ellenville New York

539

Charles S. Wise
Ritenhouse Plaza
1901 Walnut St.
Phil. Penn.
19103

Henry Wiener
760 East 10th St.
Brooklyn, N.Y. 11230

Gloria Wayne
35-80 85th St.
Jackson Hts. N.Y. 11372

Jerry Weinfogel
90-10 149th St.
Jamaica, N.Y. 11435

540

Steve White
31 Wynsum Ave.
Merrick, L.I. N.Y.
11566

540

Mr. Alfred Wyatt
315 West 80th St.
N.Y. N.Y. 10024

Terry F. Warmbir
Donald E. Warmbir
3451 N. Central Ave.
Chicago, Ill. 60634

Mr. Lawrence Weiss
Apartado 111
San Miguel de Allende
Gto, Mexico

541

Sidney Wolfburg &
Francis Wolfburg
27 Whittier Drive
Searingtown N.Y.
11507

Dr. William R.P.wilson
Seneca, South Carolina

Sol Weinberg
150 E. 69th St.
N.Y. N.Y. 10021

Henry Werner
48-18 43 St.
Woodside, N.Y.
11377

542

Mrs. Marie Woody
Fisherman's Rd.
Paisley, Fla. 32767

Dwight G. Wright
F. Jos Lamb GMBH
7310 Plochingen/N
Fabrikstrasse 34
West Germany

XYZ

Robert Ziset
P.O.Box 704
Chatham, Mass.
02633

543

Bess Eisenberg
c/o Pikowsky
1737 W. Howard Street
Chicago, Illinois 60626

Sidney J. Eisenberg
c/o Pikowsky
1737 W. Howard Street
Chicago Illinois 60626

Harry Pikowsky
1737 W. Howard Street
Chicago Illinois 60626

Randy Van Sickle
c/o Florsheim Shoe Co.
130 S. Canal Street
Chiago,Illinois 60606

BEST COPY AVAILABLE

544

Martin F. Randolph, Jr.
4441 1/2 51st Street
San Diego California 92115

Gary Michael
100 Chalet Village
Stockbridge Vermont

Michael Fagan
Watson Lane
Danbury Conn. 06810

F.F. Limehouse
c/o Limehouse Ltd.
Orangeburg Mall
Orangeburg S.C,

545

LEXINGTON 2-6800
6815

CABLE ADDRESS "BAPATENTS" NEW YORK
TELEX ITT 424094

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

543

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

Defendant's Exhibit B
in evidence

September 11th, 1974

Re: Independent Investor Protective League
vs. Teleprompter et. al. Civil Action
73 Civil 4133 R.O.

Hon. Richard Owen
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y.

Dear Judge Owen,

I am replying to the letter of September 11th, 1974 of the attorneys for the defendant Touche Ross & Company with respect to the filing of answers to interrogatories with respect to Your Honor's Order. I am accused of attempting to mislead the attorneys for this defendant into believing that there had been full compliance with Your Honor's Order. This, of course, is not correct. If there has been any irregularity involved it has been inadvertent and, in any event, there has been no prejudice to the defendant involved.

There is pending, before Your Honor, returnable September 20th, 1974, a motion to extend time for compliance with Your Honor's order to permit me to receive signed copies of the interrogatories of Messrs. Michael and Fagan. The motion involved sets forth all of the relevant circumstances. I expect that, by the time this motion is heard, I shall have received the signed answers to interrogatories.

The facts involved are as follows:

On September 5th, 1974 I had Mr. Merrill Sands, the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE sign the answers to interrogatories. I further instructed My

546

Secretary to send copies of the answers to interrogatories executed by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE to all attorneys for the defendants. I inspected these before they went out, they were properly conformed and there is no question that they were served in time. There does not seem to be any complaint with respect to these answers.

In the afternoon of September 5th, 1974 I had to leave the office for St. Louis Missouri. I prepared, before I left, copies of the answers to interrogatories which I intended to mail and to conform as soon as I returned from St. Louis Missouri.

By inadvertence, on September 5th, 1974 apparently a set of the unconformed answers to interrogatories were sent to the attorneys for TOUCHE ROSS (but were not sent to the other attorneys). Meanwhile I was told on September 5th, 1974 during my absence from the office that the answers to the interrogatories by RANDOLPH had arrived.

On September 6th, 1974 a letter was sent to me by the attorneys for TOUCHE ROSS. I did not personally receive it since I was out of the office. I was told about the receipt of the letter on September 9th, 1974 (but not the contents) and believing that Mr. Eno was referring to the answers of RANDOLPH, FAGAN & MICHAEL I told his office that I hoped to receive the signed copies of those interrogatories and would be mailing them in a few days. I again told his office on September 10th, 1974 that I hoped to receive the signed copies of the original documents in a few days. I point out that I was out of the office in Washington DC on September 9th, St. Louis on September 6th and 7th, and on depositions on September 10th 1974.

I returned to the office on September 10th, 1974 at about 6PM. In the meantime I had told Mr. Eno personally that he could inspect the answers to interrogatories on September 11th, 1974 at 9 AM. As I looked at the file on September 10th, 1974 I saw the envelope to the ROSENMAN COLIN firm missing therefrom and also saw the letters to me of said firm. Now, for the first time, I realized what had happened.

Obviously it was futile to request time extensions in view of the conversation of September 10th with Mr. Eno. I therefore prepared a motion addressed to Your Honor. I also prepared discovery applications etc. This was done between 5AM and 9AM on September 11th

At 9AM I met with Mr. Nevling and showed him the original answers of INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH. I also gave him a photo-copy of the RANDOLPH answers and he admitted service on the original. I also gave him discovery papers and plaintiff's motion for an extension of time.

At 10:45 I filed all of the papers involved in this Court.

The situation thus is as follows:

a- The answers to the interrogatories, as ordered by the Court, in the case of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH have been filed. There is a Rule 6(d) motion pending for a time extension with respect to MICHAEL and FAGAN.

b- There obviously was no attempt to mislead. The attorneys for the defendants are in communication with one another and, since only one attorney received the papers there obviously was an inadvertence in sending these.

c- There is a pending motion for extension of time for FAGAN and MICHAEL. The Court may either grant or deny it.

d- Even if FAGAN and MICHAEL were eliminated from this case it would make no difference since there are many other League members who can serve as Class Representatives.

The matter seems to be the conventional "tempest in a teapot" or conversely a "red herring". Mr. Eno does not tell the Court that I had offered to grant any extensions of time that he might require in this case until receipt of the answers of FAGAN and MICHAEL. Indeed I have been most generous in granting term extensions. I even have agreed to stay plaintiffs' discovery in this case until the defendants can make a motion directed to the sufficiency of the Complaint. I repeat my offer to grant any necessary term extensions to permit the defendants to study the interrogatory answers as received in order to permit the appropriate motions to be made.

I am prepared to meet with the Court at any convenient time if the Court feels that this is necessary.

Respectfully

I. Walton Bader

IWB/cf
cc All Defendants Attorneys

548

DEFENDANT'S
EXHIBIT
U.S. DIST. COURT
S.D. N.Y.

CTR

OFFICE COPY	
SERVED	9/5
RECEIVED	9/6/74
FILED IN COURT	
D & E	JR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

- against -

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to interrogatory 6, and if so (b) state such other addresses and occupations.

BEST COPY AVAILABLE

549

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase. (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1973	100	29-7/8
January 15, 1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF: _____)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Martin F. Randolph, Jr.

SWORN TO BEFORE ME
THIS _____ DAY
OF _____, 1974.

CERTIFICATE OF SERVICE

I, J. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

J. Walton Bader

BEST COPY AVAILABLE

552

D STATES DISTRICT COURT
ERN DISTRICT OF NEW YORK

OFFICE COPY	
SERVED	9/5
RECEIVED	9/6
FILED IN COURT	
CASE	

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MICHAEL FAGAN

The Plaintiff MICHAEL FAGAN submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is Watson Lane, Danbury, Connecticut 06810. I am a conductor, employed by the Penn Central Railroad.

7. (a) State whether any of Randolph, Michael and

Yours, etc.
BADER and BADER
Attorneys for the Plffs.

By: _____
[illegible]
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) [illegible]

302

553

Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed above.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	50	29-7/8

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Pltfs.

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CONNECTICUT)
) ss.:
COUNTY OF: _____)

MICHAEL FAGAN, being duly sworn, deposes and says that he has read the Answers to the foregoing interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and b[illegible] as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS _____DAY OF
_____, 1974.

_____
Michael Fagan

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the Attorneys for the Defendants.

OFFICE COPY

SERVED	9/5
RECEIVED	9/6/74
FILED IN COURT	
D & E	JK

555

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 CIVIL 4133
(RO)

----------x

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is 100 Chalet Village, Stockbridge, Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

Attorneys for the Plaintiffs
I. Walton Lederer
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-4580

set forth in response to interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (I) the date when he first purchased shares of Teleprompter, (II) the number of shares purchased on that date, and (III) the price per share paid for said shares, (b) (I) the date of each subsequent purchase by him of shares of Teleprompter, (II) the number of shares purchased on each such date, and (III) the price per share paid on each such purchase, (c) (I) the date of each sale by him of shares of Teleprompter, (II) the number of shares sold on each such date, and (III) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
April 1, 1972	100	30

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiff

By: _____
T. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-6800

a copy of the within document to all of the parties.

T. Walton Bader.

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: VERMONT)
) ss.:
COUNTY OF: _____)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME

THIS _____ DAY OF

_____, 1974.

_____
Gary Michael

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader

558

October 9, 1974

558

Hon. Richard Owen
Judge, U. S. District Court for the
Southern District of New York
U. S. Courthouse, Foley Square
New York, N. Y. 10007

RE: INDEPENDENT INVESTOR PROTECTIVE LEAGUE
vs. TELEPROMPTER CORP.
73 CIV. 4123 (JUDGE MACMAHON)

Dear Judge Owen:

Mr. Merrill Sands phoned me this morning and told me that it would be impossible for him to voluntarily appear at the hearing to be held before your Honor, on Friday, October 11, 1974; which was ordered by your Honor to determine the circumstances with respect to the receipt of Answers to Interrogatories of the Plaintiff, Martin F. Randolph, Jr.

Without Mr. Sands' testimony, it is impossible for the undersigned to prove that the original Interrogatory Answers of Mr. Martin F. Randolph, Jr. were actually received by me on September 5, 1974.

The Court will recall that I was out of the office on the afternoon of September 5, 1974, when the original Answers to Interrogatories of Mr. Martin F. Randolph, Jr. were received in my office.

My Secretary, who works parttime on Tuesdays, Wednesdays and Thursdays from 10:30 A. M. to 3:30 P. M., very seldom, if ever, opens my incoming mail due to her very short working schedule and the fact that

BEST COPY AVAILABLE

she has a good deal of stenographic work to keep her fully occupied. Also, my Secretary's office is located in the very rear office of the suite of offices here, and the mail is delivered to the front office.

My Secretary typed the original interrogatories to the Plaintiffs Martin F. Randolph, Jr. et al., and mailed them. She put into the file the copies of the interrogatories and attached a note to the file indicating that all the copies were to be retained until the original Answers were received, so that the copies could be properly conformed and mailed to all of the attorneys. That is the last that my Secretary saw or heard of this matter.

Mr. Merrill Sands came to my office on September 5, 1974, in the afternoon, when my Secretary had already left.

Under the circumstances, I felt that the most appropriate manner of disposing of this question would be to file a Notice of Voluntary Dismissal against all of the Defendants with respect to the Plaintiff Martin F. Randolph, Jr.

Since Answers or Motions for Summary Judgment have not been made by any of the Defendants, this manner of procedure is appropriate. I believe that the filing of the enclosed Notice of Dismissal moots the Hearing on October 11, 1974.

However, in the event that the Court believes that the Hearing should go forward, it would be necessary for me to obtain compulsory process or the deposition of Mr. Sands. In addition, since my whereabouts during the period September 5th to September 11th, 1974, are being questioned, I would require the oral testimony of Mr. Edward F. O'Herin, an attorney of Haldon, Missouri, who intends

560

Hon. Richard Owen

October 9, 1974

560

to be in New York during the period of October 22, 1974 to October 25, 1974. It will further be necessary for me to obtain hotel reservation records from the Holiday Inn of Arlington, Virginia, and the hotel in St. Louis at which I stayed. Furthermore, it will be further necessary to obtain airline confirmation of the flights on which I traveled from New York to St. Louis and to Washington, D. C. Furthermore, the oral testimony of Mr. Norma Nelson, an attorney of Messrs. Milbank, Tweed, Et Al., will be necessary to establish my whereabouts on Tuesday, September 10, 1974.

Under the circumstances, I would respectfully request that, if the Hearing on October 11, 1974 is to go forward, that it be adjourned to Friday, October 25, 1974.

Respectfully,

IWB:db

I. Walton Bader

cc: Honorable Richard Owen,
Judge, U.S. Dist. Court
for the Southern Dist. of New York

cc: Messrs. Shea, Gould, Climenko & Kramer
330 Madison Avenue
New York, N. Y. 10017

cc: Messrs. Lawler, Sterling & Kent
500 Fifth Avenue
New York, N. Y. 10036

560a

Hon. Richard Owen

October 9, 1974

cc:
TO: Messrs. Rosenhaus, Markewich
& Brinsman, Esqs.
390 Fifth Avenue
New York, N. Y. 10001

Messrs. Rosenman, Colin, Kaye,
Petschek, Freund & Emil, Esqs.
575 Madison Avenue
New York, N. Y. 10022

Philip Jones, Esq.
845 Third Avenue
New York, N. Y. 10022

561

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER CORP. et. al.

Defendants

SUPPLEMENTAL AFFIDAVIT BY
PLAINTIFF INDEPENDENT
INVESTOR PROTECTIVE LEAGUE

STATE OF NEW YORK
ss:
COUNTY OF PUTNAM

MERRILL R. SANDS, being duly sworn, deposes and says:

I am the Secretary and a Director of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and am the management representative of the League in charge of this litigation. I am controlling the strategy of this litigation and my attorneys are carrying out my instructions. Indeed the attorney in charge of this case for the plaintiffs is General Counsel of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

At the outset I wish to inform the Court that Mr. Randolph, one of the plaintiffs in this action, first approached me in connection with the issues in this case and it was I who made Mr. Randolph a member of the League.

I further state that the inadvertent mailing of a set of unsigned answers to interrogatories was done by me by inadvertence upon my visit to Mr. Bader's office late in the day of

September 5th, 1974. I had, prior to the said mailing, seen the executed answers of Mr. Landolph which had arrived late in the day at Mr. Bader's office and I then assumed that I could send out the copies thereof.

I therefore wish to inform the Court that while the mailing of these copies to the attorneys for Touche Ross & Company was an inadvertence it was my inadvertence and was not due to any fault of Mr. Bader.

I also wish to inform the Court as to the reason for the delay in answering the interrogatories in the first instance.

My investigation of the SEC files indicated that Touche' Ross & Company, the defendant herein, had been severely dealt with by the SEC in connection with audits performed for U.S. Financial. I also determined that the SEC had a preliminary investigation in progress with respect to TELEPROMPTER CORPORATION. I was informed by the SEC that, under no circumstances, will investigational files be made available with regard to an investigation in progress by the SEC but, after the conclusion of an investigation, if it results in administrative sanctions or court action, the processes and pleadings involved will become available to the public. Also, if the investigation concludes with some type of voluntary sanctions, it is sometimes possible to obtain the SEC investigational files.

Therefore, in this case, I determined that the League should not go ahead with an active role in this action until the SEC investigation was concluded. The SEC investigation has, in fact, now been concluded and resulted in a consent order against TELEPROMPTER CORPORATION. Discovery can now be had with respect to the manner in which the investigation was conducted and possibly obtain access to the SEC investigative file.

I was subsequently informed by Mr. Bader that he had arranged an "open ended" stipulation with the defendants wherein, so long as the interrogatories were not answered, the defendants would not have to answer or otherwise move with respect to the Complaint.

I now go to the claim, made by the defendant TOUCHE ROSS & COMPANY that the interrogatories, as required to be answered by Court Order, were not properly answered within the time allowed. This is, I submit, utter nonsense.

The records of purchases and sales of TELEPROMPTER stock, as set forth in the records of the League, were fully set forth in the Answers to Interrogatories. The reason why sales were not mentioned with respect to all members other than Randolph is that, insofar as the League is aware, there were no such sales. With respect to the claim that there was not full disclosure of all purchases the records of the League set forth only those purchases given by its members to the League. Thus the answers to interrogatories supplied heretofore represent the total knowledge known to the League and the claim that these answers are inadequate is total nonsense.

The League has also obtained, from the plaintiff RANDOLPH, all of the confirmations of his stock purchases. These are annexed to this affidavit. There is some variance between these confirmations and the information supplied in the answers to interrogatories of RANDOLPH. However the RANDOLPH answers were qualified as constituting his best knowledge at the time these answers were given. If they are inaccurate the defendants are at liberty to make any application to the Court that they so desire.

The League has also received the answers of the plaintiff MICHAEL and these answers have been now filed with the Court and duly served upon the attorneys for all defendants.

WHEREFORE the undersigned prays that the motions made by the defendant TOWERS REALTY COMPANY be in all respects denied and the motion for extension of time by the plaintiffs be in all respects granted.

Merrill R. Spaeth

Sworn to before me
this 17th day of September 1974.

J. WALTON HADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5153000
Qualified in New York County
Commission Expires March 30, 1976

565

212 WHITEHALL 3-5000

Fahnestock & Co.
(Established 1891)
110 WALL ST., NEW YORK, N. Y. 10005

OFFICE COPY

CUSIP-NO 079488104

AS BROKERS FOR YOU OR AS PRINCIPALS WHERE INDICATED BY NUMBER 1 UNDER ◊, WE HAVE MADE THE FOLLOWING TRANSACTION

YOU BOUGHT ●	YOU SOLD		PRICE									
200		TELEPROMPTER CORP	28	3/8	7115	012273	12	7994	1	50	◊	●
					TRADE DATE	NO. OF SEC.						

FEE REVERSE SIDE

PRINCIPAL	INTEREST	COMMISSION	TRANSFER TAX	SEC. FEE	NET AMOUNT
5,600.00				69.00	5,769.00

NET AMOUNT *

DR MARTIN P RANDOLPH JR
10 OSCO HILL AVE
DANBURY CT 06810

FEBRUARY, 1972

IN ACCOUNT WITH

MR MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CT 06810

Fahnestock & Co.
(Established 1881)
110 WALL STREET
NEW YORK, N. Y. 10005
TEL. 212 WHITEHALL 3-8900

12 7554 1

TYPE CODE
1. CASH
2. MARGIN
3. SHORT
4. NON-PURPOSE
5. SPECIAL SL
6. INCOME
7. SPECIAL BC
8. SPECIAL CC

DATE	QUANTITY BOUGHT OR RECEIVED	QUANTITY SOLD OR DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MARKED
02-14			CHECK				
02-16	25		TELEPROMPTER CORP	DAN 140 3/4	3,568.34	3,568.34	
			SECURITY POSITIONS				.001
	25		TELEPROMPTER CORP				

NOTICE: THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES. SEE REVERSE SIDE FOR AGREEMENT, ETC.

567

567

STATEMENT ENDING	ACCOUNT	H.O.	PAGE
12-31-73 03	44-00137	039	1

LAST STMT.	S.S./I.D. NO.
- -	6711 049-30-7894

MARTIN F RANDOLPH JR
70 DEER HILL AVE
D. BURY CONN 06810

IN ACCOUNT WITH

E. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS 02109

20 EXCHANGE PLACE NEW YORK, N. Y. 10005	209 CHURCH STREET NEW HAVEN, CONN. 06507
120 SOUTH LA SALLE STREET CHICAGO, ILL. 60603	1 INDIANA SQUARE INDIANAPOLIS, IND. 46204

WE HAVE RECEIVED CONFIRMATION FOR TRADES
NOT APPEAR ON YOUR STATEMENT. HOW-
THE SETTLEMENT DATE OF TRADE AS SHOWN
CONFIRMATION WAS LATER THAN THE DATE
AT THE TOP OF YOUR STATEMENT THE
WILL APPEAR ON YOUR NEXT REGULAR MONTH-

THIS STATEMENT SHOULD BE RETAINED AS IT
INFORMATION THAT MAY BE NEEDED TO
ANY INTEREST CHARGES APPEAR-
STATEMENTS, AND FOR INCOME

ALL COMMUNICATIONS SHOULD BE SENT
TO YOUR ACCOUNT. PLEASE
AS SHOWN ABOVE.

PLEASE ADVISE US IMMEDIATELY IF NOT

NO DEBITS EXCEPTED.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT
0112			OPENING BALANCE CASH ACCOUNT			
			CK RECD	CHK		
0115	100		TELEPROMPTER CORP	29 7/8	3,036.39	
0131			CLOSING BALANCE CASH ACCOUNT			
	100		TELEPROMPTER CORP	POS		
			END OF STATEMENT		**********	

CDV	0.00	INT	0.00	MUN	0.00	YTD DV	0.00	YTD INT	0.00	YTD

568

01-31-73 | 048-53-7394

MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

PLEASE THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO EXPLAIN OR TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND FOR INCOME TAX PURPOSES.

ALL CHECKS AND COMMUNICATIONS SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT. PLEASE MENTION ACCOUNT NUMBER SHOWN ABOVE.

PLEASE EXAMINE AND RETURN IMMEDIATELY IF NOT CORRECT.

E & OE-ERRORS AND OMISSIONS EXCEPTED.

0220				CK RECD	CHK		
0221		100		TELEPROMPTER CORP	25 1/2		2,594.
0221				CK RECD	CHK		
0222		100		TELEPROMPTER CORP	24 1/2		2,493.
0223				CK PAID	CHK		1.
0223				CLOSING BALANCE CASH ACCOUNT			
		300		TELEPROMPTER CORP	POS		
				END OF STATEMENT			**********
DIV	0.00	INT	0.00	MUN	0.00 YTD DV	0.00 YTD INT	0.0

569

HANGE PLACE
Y. 10005

205 CHURCH STREET
NEW HAVEN, CONN. 06507

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

BOUGHT	SOLD		PRICE	M	C
	200	TELEPROMPTER CORP	27 7/8	2	1

CU. 87,489104030

PRINCIPAL	INTEREST	COMMISSION	STATE TAX		SEC. FEE	SEC. FEE		TRADE DATE	TRADE NO.
5 [illegible]	00	[illegible] 28	4 50		12			[illegible] 12	21

-1 WALTER F RANDOLPH JR
90 DEER HILL AVE
DANBURY CONN 06810

S-08

ACCOUNT NUMBER	A/C	SECURITY	
[illegible] 023.-1-2	10	[illegible] 1 [illegible] 000	231
049-48-7 [illegible]			

PAYMENT OF PURCHASE OR DELIVERY OF SOLD MUST BE RECEIVED BY

SETTLEMENT DATE

A CHECK FOR THE NET AMOUNT DUE ON SALES WILL BE MAILED ON SETTLEMENT DATE UNLESS OTHERWISE REQUESTED

IN OTHER THAN NORMAL TRADING UNITS (NORMALLY 100 SHARES) ON ALL EXCHANGES AN AMOUNT HAS BEEN ADDED TO THE PRICE OF PURCHASES OR DEDUCTED ON SALES. ON OVER-THE-COUNTER STOCK EXCHANGE [illegible] AMOUNT IS $.12½ PER SHARE. IN ALL CASES AN EXPLANATION WILL BE PROMPTLY FURNISHED ON REQUEST.

IN ACCORD WITH YOUR INSTRUCTIONS WE HAVE THIS DAY MADE THE ABOVE TRANSACTION FOR YOUR ACCOUNT SUBJECT TO THE AGREEMENT ON THE REVERSE THEREOF.

570

570

	ACCOUNT		PAGE
-30-73 03	44-00137	039	1

LAST STMT.	S.S./I.D. NO.
2-28-73	5909 049-30-7894

RTIN F RANDOLPH JR
O DEER HILL AVE
ANBURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.

ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

1 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

571

DATE	PURCHASED OR LONG	SOLD OR SHORT	DESCRIPTION	PAID OR ENTRY	AMOUNT CHARGED
0223			OPENING BALANCE CASH ACCOUNT		
0226		100	TELEPROMPTER CORP	TFR	
0308		200	TELEPROMPTER CORP	27 7/8	
0309			CK PAID	CHK	5,484.20
0328	100		TELEPROMPTER CORP	27 3/8	2,784.14
0329			CK RECD AS OF 3/28/73	CHK	
0329			CK RECD AS OF 3/28/73	CHK	
0329			CK RECD AS OF 3/28/73	CHK	
0329			CK RECD AS OF 3/28/73	CHK	
0330			CLOSING BALANCE CASH ACCOUNT		
	100		TELEPROMPTER CORP	POS	
			END OF STATEMENT		**********

IF WE HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT, HOWEVER, THE SETTLEMENT DATE OF TRADES AS SHOWN ON CONFIRMATION WAS LATER THAN THE DATE APPEARING AT THE TOP OF YOUR STATEMENT THEY WILL APPEAR ON YOUR NEXT REGULAR MONTH-END STATEMENT.

WE THINK THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO REFER TO, TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND FOR INCOME TAX PURPOSES.

CHANGE OF ADDRESS OR OTHER COMMUNICATIONS SHOULD BE SENT DIRECTLY TO THE OFFICE SERVICING YOUR ACCOUNT. PLEASE GIVE ACCOUNT NUMBER SHOWN ABOVE.

EXAMINE AND RETURN IMMEDIATELY IF NOT CORRECT.

ERRORS AND OMISSIONS EXCEPTED.

DIV	0.00	INT	0.00	MUN	0.00 YTD DV	0.00 YTD INT	0.00	YT

571

DANBURY CT 06810

110 WALL STREET

NEW YORK, N. Y. 10005

TEL. 212 WHITEHALL 3-6900

QUANTITY		DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MARKED
		CHECK	DAN		2,150.00	
100		TELEPROMPTER CORP	C24 7/8	2,531.84		381.84
		SECURITY POSITIONS				
100		TELEPROMPTER CORP				

NOTICE - THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT, ETC.)

572

[redacted]

110 WALL STREET
NEW YORK, N. Y. 10005
TEL. 212 WHITEHALL 3-8900

DATE	QUANTITY PURCHASED / RECEIVED	QUANTITY SOLD / DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MAR
			BALANCE FWD MAR.30,1973				381
03-31			CHECK	CAN		151.42	
04-		10	TELEPROMPTER CORP	C26 7/8		2,638.00	
04-			CHECK	CAN		69.00	
04-12	100		TELEPROMPTER CORP	C24 1/4	2,468.53		
04-16			MCH.TC APR.6 9%	INT	.31		
			AVG DR BAL 16 DAYS 331.36				
			CLOSING INT BAL 82.05CR				
			SECURITY POSITIONS				
	10		TELEPROMPTER CORP				

NOTICE THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT, ETC.)

574

2 Whitehall 34700

CUSIP-NO 879[illegible]4

Fahnestock & Co.

(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

BROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ♦, WE HAVE MADE THE FOLLOWING TRANSACTION

LONG ♦	YOU SOLD 1		PRICE	TRADE DATE	SETTLEMENT DATE	ACCOUNT NO	TYPE	CM	! ♦
100		TELEPROMPTER CORP	24 1/4	3464	241172	12 7554	2	50	2

SEE REVERSE SIDE

Principal			Rate	Amount
				43.33

2,468.33
NET AMOUNT *

MR CHARLES F RANDOLPH JR
[illegible] DEER HILL AVE
DANBURY CT 06810

574

PLEASE RETURN ATTACHED COPY 2 WITH YOUR REMITTANCE AND/OR SECURITIES SOLD IF NOT IN YOUR ACCOUNT ON OR BEFORE DUE DATE.

575

WHITEHALL 3-6900

CUSIP-NO 879488114

Fahnestock & Co.
(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

BROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ◆, WE HAVE MADE THE FOLLOWING TRANSACTION:

BOUGHT ●	YOU SOLD		PRICE	TRADE DATE	SETTLEMENT DATE	ACCOUNT NO	T F E	CM	† ◆
		TELEPRINTER CORP	20 1/4	5 21	5 27	12 7554	2	50	2

SEE REVERSE SIDE.

Or other than round lots, multiply 100 shares at the above price plus an amount not less or less than $1/8 per share, or as otherwise indicated on sale. On the New York Stock Exchange this amount is 12½¢ per share. In all other cases an explanation will be provided on request.

PRINCIPAL	INTEREST	STATE TAX		REG. FEE	COMMISSION
8,[illegible]					118.81

8,218.81
NET AMOUNT *

MR MARTIN F RANDOLPH JR
7 DEER HILL AVE
DANBURY CT [illegible]

575

PLEASE RETURN ATTACHED COPY 2 WITH YOUR REMITTANCE AND/OR SECURITIES SOLD (IF NOT IN YOUR ACCOUNT) ON OR BEFORE DUE DATE.

WE CONFIRM THE FOLLOWING TRANSACTION ELEVATED TO THE ACCOUNT ON THE REVERSE SIDE HEREOF

[redacted]

MEMBER NEW YORK STOCK EXCHANGE, INC.
[redacted]

QUANTITY	NOW OR	DESCRIPTION	PRICE	AMOUNT
400		TELEPROMPTER CORP	13 1/2	540000
		DUPLICATE	INTEREST	
			COMM. CHG.	9460
			STATE TAX	1500
			REG. FEE	11
			MISCELL.	
			N.& P.	
			CON. TAX	
			DUE YOU	529029

AMOUNT >

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS

[redacted]

279 3010 25000010

70 11733 1 50 N

TRADE DATE 031073

DATE DUE 031773

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

ALL CHECKS, DRAFTS, ETC. SHOULD BE SENT TO THE OFFICE WHICH KEEPS YOUR ACCOUNT

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF.

[redacted]

MEMBER-NEW YORK STOCK EXCHANGE, INC.
[redacted]

WE BOUGHT	YOU SOLD
	200

DESCRIPTION

200 TELEPROMPTER CORP

SEC. FEE NO.	REFERENCE NO.
[redacted]	[redacted]

YOUR ACCOUNT NUMBER	A/E
TE 11733 1 58	M

TRADE DATE	111273
DATE DUE	111973

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

PRICE	AMOUNT
4 3/4	$5000
INTEREST	
COMM./CHG.	3488
STATE TAX	250
REG. FEE	02
MISCELL.	
I. & P.	
CDN TAX	
AMOUNT ▷ DUE YOU	$1250

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS

S77

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE STATEMENT ON THE REVERSE HEREOF.

DREXEL WEBSTER & CO.

MEMBER N.Y. STOCK EXCHANGE, INC.

400	
104 24002589	
76 11733 1 98	
TRADE DATE 061273	
DATE DUE 061273	

DESCRIPTION

TELEPROMPTER CORP

PRICE	AMOUNT
9 1/4	3700.00
INTEREST	
COMM./CHG.	79.00
STATE TAX	10.00
FED. FEE	.02
MUNICIPAL	
S & P	
CON TAX	
DUE YOU	3610.82

AMOUNT ▷

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

ALL CONFIRMATIONS, NOTICES, ETC. SHOULD BE SENT TO THE OFFICE CARRYING YOUR ACCOUNT.

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS.

579

U.S. DISTRICT COURT
S.D. OF TEXAS

HTR

9/15

UT

Phone _____
Area Code Number Extension

TELEPHONED	✓	PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
	RETURNED YOUR CALL		

Message: Rec'd your letter
about ~~telefax~~ Flex Cop
Will send Xerox
photo copies of requ

Operator

- 306 -

(over)

530

50

Interrogatory a
written night few
days

RK.

DEFENDANT'S EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.

581

581

NMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

SAMUEL J. ROSENMAN
1896-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK F. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EELSON
ARNOLD I. ROTH
GEORGE L. GOUDON
LAWRENCE B. RUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAX L. NARASON
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

BY HAND

September 9, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received a telephone message from you in response to my letters of September 6 and 7 in which you say that you will send us copies of the original Interrogatory answers "within the next few days." This is unsatisfactory to us. Mr. Nevling is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 6(c) of the General Rules of the Court, we shall assume that you do not have the originals, and did not have them on September 5, 1974, and shall proceed accordingly.

Yours very truly,

LRE/LMN

cc: All Counsel

582

582

9/19

From [redacted]

9:25 A.M

To IRE

Mr. Bader called. Re Interrogatories. He will be sending photo copies of the original answers. He extends his apologies. He will extend your time to answer for 2 1/2 or three weeks.

MK

EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.
K 18

583

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
STONEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR C. LEWIS
LAWRENCE A. ENO
MURRAY COHEN
WILLIAM W. SOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOROLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE A. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARANCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1906-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

58

September 6, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received in the mail, under postmark of September 5, 1974, what purport to be answers to Touche Ross' interrogatories by plaintiffs. Would you please advise whether the original answers have been filed in Court as required by Rule 6(c) of the General Rules of the Court. If not, we request that the originals be filed immediately.

The copies of the purported answers we received are incomplete in the following respects:

Michael Fagan. Nothing indicates whether you as attorney signed the answers or whether Mr. Fagan individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Connecticut is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Fagan signed the answers, (b) whether Mr. Fagan swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

I. Walton Bader, Esq. September 6, 1974

Martin F. Randolph, Jr. Nothing indicates whether you as attorney signed the answers or whether Mr. Randolph individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in California is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Randolph signed the answers, (b) whether Mr. Randolph swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

Gary Michael. Nothing indicates whether you as attorney signed the answers or whether Mr. Michael individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Vermont is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Michael signed the answers, (b) whether Mr. Michael swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

IIPL. While there is an indication that Mr. Sands swore to these answers, there is nothing to indicate whether you did so, or when Mr. Sands swore to the answers or the name of the notary before whom he did so. Would you please therefore supply this information.

The foregoing does not relate to any substantive objections that we may have to the answers but simply to the question of whether the answers were properly executed by the plaintiffs, if they were executed at all.

Yours very truly,

Lawrence R. Eno

LAWRENCE R. ENO

LRE/SGS

cc: All Counsel

585

COPY

RCKPF&E

The person mailing or delivering this letter must fill out the following.

DATE 9/7 19[illegible]

MAILED BY RRE

DELIVERED BY

AT A.M. P.M.

There must be no exception to this rule.

585

September 7, 1974

I. Walton Bader, Esq.
Bader & Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League et al. v. Telaprompter et al.

Dear Mr. Bader:

In my letter of September 6, 1974, there is an error on page 2 insofar as IIPL is concerned. The inquiry respecting you should be whether you signed the answers rather than swore to them.

Yours very truly,

LAWRENCE R. ENO

LRE/rn

92310-018

FEND

DIST. COURT
D. OF N. Y.

LTD

586

586

TYPE CARRIER TRIP | ROUTE NO. 14

LAST NAME: LaPosta | INITIALS | DATE: 9/5 | DPA: 6

SOCIAL SECURITY NO.: 085-05-1058 | PAY LOC: 543 | DES/ACT: 13

TYPE ACTION	TRANS CODE	TIME (Hour & Hundredths)	OPERATION NO.
BT		0893	718
MV		0784	717
MV		0939	716
MV		1058	717
OL		1118	718
IL		1249	718
MV		1318	717
MV		1413	718
ET		1450	718

SIGNATURE OF SUPERVISOR | O/T HRS. AUTH

Ps Form 1260
Mar. 1971

NON TRANSACTER CARD

INSTRUCTIONS

Record in chronological order the employees action, operation number, and time as performed during his tour. Supervisors must check the form, verifying all entries to be correct, and must sign the form. If any overtime is authorized, supervisor must indicate number of hours in appropriate box. At the end of the day this form must be submitted to the Main Office via the last dispatch leaving the station. If leave action is required, enter the type of leave (SL, AL, etc.) and the number of hours. The start time for leave will be shown in the TIME column.

GPO 648—16—79440-1 383-544

588

4PO GRAND C CARRIER REPORT 09/06/74 DPP 06 PP 19 PG 14

EMPLOYEE NAME	SOC. SEC.	D/A	ROUTE	DPP	BT	BS	TIME RS	ET	OFFICE	HOURS STREET	TOTAL
MANN	TF115091655	13-4	16012	717	0593	0773	1423	1439	3.37	4.59	7.96
			16012						7.18	8.79	15.97
GIARDINA	G 057263471	13-4	16013	717	0594	1023	1206	1443	2.29	1.85	4.14
MCLAUGHLIN	JT063056550	13-4	16013	717	0591	0779	1429	1439	5.35	2.73	8.08
SHEEHY	JJ075164107	13-4	16013	717	0591	0779	1431	1436	3.93	4.13	8.06
GOETZ	E 099222396	13-4	16013	717	0593	0779	1424	1434	3.66	4.35	8.01
STINSON	HM419404941	13-4	16013	717	0103	0779	0948	0948	.73	1.69	2.42
			16013						15.96	16.75	30.71
CRUM	GS055125438	13-4	16014	717	0611	0784	1414	1451	4.22	3.76	7.98
GILCHRIST	W J753R8552	13-4	16014	717	0708	0784	1164	1211	2.40	2.63	5.03
LA PORTA	VJ045051058	13-4	16014	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
GETTINGS	R 116108201	13-4	16014	717	0593	0784	1414	1446	4.07	4.08	8.15
			16014						10.69	10.45	21.14
DAVIS	P 223260620	13-4	16015	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
POWELL	T 242544366	13-4	16015	717	0639	0784	0944	1444	1.40	1.60	3.00
KORNEGAY	D 243442473	13-4	16015	718	0604			1453	4.56		4.56
WHITE	MF246682574	13-4	16015	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
			16015						5.96	1.60	7.56
RUFFO	PA084187674	13-4	16016	717	0594	0768	1411	1441	5.44	2.65	8.09
BIERLMAIER	JF097245291	13-4	16016	717	0606	0768	1454	1454	3.11	5.05	8.16
LOPEZ	O 130405281	13-4	16016	717	0599	0768	1468	1468	3.15	4.95	8.10
			16016						11.70	12.65	24.35
COLON	JR060382726	13-4	16017	717	0599	0774	1218	1443	4.69	3.41	8.10
MCCRUDDEN	DM153305692	13-4	16017	717	0104	0773	0948	0948	1.42	1.75	3.17
PADILLA	C 561582762	13-4	16017	717	0591	1056	1468	1468	5.18	3.02	8.20
			16017						11.29	8.18	19.47
MARTINEZ	W 058420786	13-4	16018	717	0589	0754	1416	1439	3.62	4.38	8.00
JACILLA	L 072128463	13-4	16018	717	0589	0754	1414	1438	3.67	4.36	8.03
GREENBERG	FS119244712	13-4	16018	717	0106	0754	0949	0949	.58	1.95	2.53
LEWIS	R 422708846	13-4	16018	718	0601	1024	1463	1463	2.28	3.29	5.57
			16018						10.15	13.98	24.13
HARTENSTEIN	N 055464799	13-4	16019	718	0600			1441	.20		.20
GONZALEZ	E 076347290	13-4	16019	717	0598	0764	1449	1449	3.07	4.95	8.02
FRIEDMAN	P 104180737	13-4	16019	717	0594	0764	0999	0999	1.70	2.35	4.05
BLOCK	M 112059159	13-4	16019	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
			16019						4.97	7.30	12.27
PINNEY	LJ070141493	13-4	16020	717	0603	0768	1428	1446	2.50	5.45	7.95
PENA	LD118144954	13-4	16020	717	0094	0768	0949	0949	.62	1.81	2.43
			16020						3.12	7.26	10.38
NICHOLSON	JF062261384	13-4	16021	717	0601	0763	1443	1443	2.29	6.13	8.42
LISS	S 081011006	13-4	16021	717	0593	0763	1429	1441	3.86	4.19	8.05
PROSPER	JA581488937	13-4	16021	717	0596	0856	1271	1441	4.30	4.15	8.45
			16021						10.45	14.47	24.92
YELLIN	I 050147795	13-4	16022	723	0589	0813	1099	1441	5.21	2.86	8.07
NATION	D 051381575	13-4	16022	723	0598	1258	1449	1449	6.29	1.91	8.20
			16022						11.50	4.77	16.27
CASELLA	J 084463645	13-4	16023	724	0598			1443	8.40		8.40
MELECIO	JH103341452	13-4	16023	723	0591	0901	1114	1448	6.07	2.13	8.20
			16023						14.47	2.13	16.60
MILLER	S 075402580	13-4	16024	723	0596	0826	1246	1443	4.22	4.20	8.42

DEFENDANT'S EXHIBIT
U.S. DISTRICT COURT

BEST COPY AVAILABLE

589

DEPTS
PLAINTIFF
EXHIBIT
U.S. Dist. Court
S.D. of N.Y.
N 72

COPY

RCKPF&B

The person mailing or delivering this letter must fill in the following:
DATE 9/10/74
MAILED BY
DELIVERED BY Samuels
AT A.M. P.M.
There must be no exception to this rule.

589

BY HAND

September 10, 1974

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League
v. Teleprompter

Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Nevling of our office the originals of the purported further answers of plaintiffs Martin F. Randolph, Jr., Gary Michael and Michael Fagan, as well as the original further answers of IIPL.

Please be further advised that we are requesting Judge Owen to conduct an immediate investigation into the matter of these answers if the originals are not exhibited to us at that time and place.

Very truly yours,

LRE/mk

Lawrence R. Eno

cc: All Counsel

9231.0-018

DEFENDANT'S
EXHIBIT
U. S. D. C. S. D. N. Y.
O12

590

SENMAN COLIN KAYE PETSCHEK FREUND & EMIL
575 MADISON AVENUE NEW YORK, N.Y. 10022

BYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. MOSKOW
AMBROSE DOSKOW
SEYMOUR B. LEDDY
LAWRENCE H. LEVY
MURRAY COHEN
WILLIAM W. [illegible]
MANUEL MAXWELL
ANDREW [illegible]
JACK E. [illegible]
ASA D. SOFFORD
MAURICE H. [illegible]
SAMUEL H. [illegible]
GILBERT S. [illegible]
ARNOLD L. ROSEN
GEORGE L. GORDON
LAWRENCE H. [illegible]
EUGENE [illegible]
GERALD [illegible]
MALL [illegible]
M. PAUL [illegible]
EDWARD [illegible]
FLORA [illegible]
PETER [illegible]
LEE H. ROBINSON
FRANK H. [illegible]
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1888-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

September 11, 1974

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York

Re: Independent Investor Protective League
v. Teleprompter
73 Civ. 4133 (RO)

Dear Judge Owen:

We feel compelled to bring the following circumstances to the attention of the Court:

On August 16, 1974, your Honor directed plaintiffs to serve within 20 days (i.e., by September 5, 1974) further answers to Interrogatories dated November 1, 1973 propounded by defendant Touche Ross & Co. ("Touche Ross").

On September 6, 1974, we received in the mail, under postmark of September 5, 1974, copies of what purported to be further answers by the individual plaintiffs. Copies thereof are annexed hereto. As is readily apparent, there is nothing to show that those further answers of Messrs. Randolph, Michael and Fagan were ever executed by them. Although those further answers were purportedly executed in California, Vermont and Connecticut, the respective counties do not appear in the jurats; there is no indication that the further answers were ever signed or sworn to; no date on which the further answers were allegedly sworn to appears; and no notary names or stamps appear.

Accordingly, on September 6 and 7, 1974, we wrote to I. Walton Bader, Esq.*requesting that the originals of the further answers be promptly filed pursuant to Rule 6(c) of the General Rules of this Court -- which requires such filing within 2 days of service -- and requesting that the missing information be supplied. Copies of those letters are attached.

Early on the morning of September 9, 1974, my office received a message from Mr. Bader to the effect that photocopies of the originals would be mailed to us "within the next few days." I immediately sent to Mr. Bader by hand a letter stating that unless the originals were filed by the close of the day September 9 or we were permitted to inspect the originals by the close of that day, we would have to assume that Mr. Bader did not have the originals and that he did not have the originals on September 5, when he purported to send us copies thereof. A copy of that letter is annexed hereto.

The originals were not filed by the end of the day September 9 nor were we permitted to inspect them by the end of that day.

On September 10, 1974, we received another cryptic message from Mr. Bader to the effect that we could inspect the originals sometime in the future. I then called Mr. Bader's office and was told that he was not available. Shortly after leaving word that unless Mr. Bader called me promptly I intended to communicate with the Court, Mr. Bader returned my call. I told Mr. Bader that unless we were permitted to inspect the originals that day, September 10, we intended to communicate with the Court on the subject. Mr. Bader assured me that he had the originals but that he did not know where the originals were in his office and that he might have left them at home. Mr. Bader finally said that he would exhibit the originals at 9:00 A.M. on September 11, 1974 in his office to Mr.

---

*plaintiffs' counsel

Nevling of our firm. I sent a confirming letter by hand on September 10 to Mr. Bader, copy of which letter is enclosed.

Mr. Nevling appeared at Mr. Bader's office this morning. Mr. Bader then exhibited original further answers executed by Mr. Randolph. Mr. Bader told Mr. Nevling that he had not received executed further answers from either Mr. Michael or Mr. Fagan. It thus appears that in the cases of those two plaintiffs what Mr. Bader sent us on September 5 were drafts of proposed further answers by those plaintiffs and that they were sent to us in an effort to mislead us, and other counsel, into believing that those plaintiffs had made timely responses to the interrogatories as ordered by the Court on August 16, 1974.

We are bringing these extraordinary circumstances to the prompt attention of the Court since your Honor has general supervision of the conduct of this case.

Respectfully yours,

Lawrence R. Eno

LRE/mk
enclosures

cc: I. Walton Bader, Esq. (by hand)
All Counsel

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F COLIN
MAX FREUND
SYDNEY M KAYE
ALLAN D EMIL
WALTER J PETSCHEK
EDWARD P ROSINY
AMBROSE DOSKOW
SEYMOUR D LEWIS
LAWRENCE R ENO
MURRAY COHEN
WILLIAM W GOLUB
MANUEL MARKELL
ANDREW J GOLDEN
JACK E BRADSTON
ASA D SOROLOW
MAURICE M GOETZ
SAMUEL M LINDENBAUM
GILBERT S EDELSON
ARNOLD I ROTH
GEORGE I GORDON
LAWRENCE H BUTTENWIESER
EUGENE L VOGEL
GERALD WALPIN
MALL BARASCH
M PAUL RUBAN
EDWARD H COHEN
FLORA SCHMALL
PETER F HADEL
LEE H ROBINSON
FRANK R ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1888-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-8749

593

BY HAND

September 10, 1974

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League
v. Teleprompter

Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Nevling of our office the originals of the purported further answers of plaintiffs Martin F. Randolph, Jr., Gary Michael and Michael Fagan, as well as the original further answers of IIPL.

Please be further advised that we are requesting Judge Owen to conduct an immediate investigation into the matter of these answers if the originals are not exhibited to us at that time and place.

Very truly yours,

Lawrence R. Eno

LRE/mk

cc: All Counsel

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSENY
AMBROSE O'DONOVAN
SEYMOUR G. LEWIS
LAWRENCE H. ENO
MURRAY COHEN
WILLIAM M. GOGUB
MANUEL MAGNES
ANDREA J. ROSENTHAL
JACK E. BRONSTEIN
ASA D. SOKOLOW
MAURICE M. GOLDSTEIN
SAMUEL H. LIEBOWITZ
GILBERT S. EDELSON
MORTON P. HOLLANDER
GEORGE GOLDSTEIN
LAWRENCE J. HUTTENWIESER
EUGENE L. GOLDMAN
GERALD NAGLER
MALL BASSIN
H. PAUL ROSMAN
EDWARD M. COHEN
FLORA SCHMALL
PETER F. MADDEN
LEE M. ROBINSON
FRANK R. ROSENY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1888-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

594

BY HAND

September 9, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received a telephone message from you in response to my letters of September 6 and 7 in which you say that you will send us copies of the original Interrogatory answers "within the next few days." This is unsatisfactory to us. Mr. Nevling is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 6(c) of the General Rules of the Court, we shall assume that you do not have the originals, and did not have them on September 6, 1974, and shall proceed accordingly.

Yours very truly,

[illegible]

LRE/LHW

cc: All Counsel

Mon. Sept 9, 1974

595

Incoming

Mr. Yokel
Mr. Bader - LE2-6860 (10:37 AM)
Mr. Spannier 3:30

Outgoing

Mr. Bader (LE2-6860).
Mr. John Murphy
(203) 688-1911
Mr. Hallonen
581-3600
Mr. Fairchild (312) 761-5600

Tuesday, 9/10/74

596

Incoming

The Baden

Frank Looney here

Eleanor - book keeping

Mr. Norman

Mr. Sterman Lee

Arnold Roth

The Polish.

Stanley Ferrand

Mr. Roth

Jay Schwartz

The Baden's secretary

The Baden

Julius Looney (Restaurant)

The Kaufman

Mr. Richard's Lee

The Dodson

The Dalbeans

The Fennelly.

Outgoing

Mr. Spanier 758-9400

The Baden's secretary

The Polish

The Dalbeans (spoke w/ Jay)

Hymon Rosenblatt.

RTB

-318

AS cont'd 597 597

Did you ask Randolph

answers?

Barry said to Sands after first T:

"If Brasini tried in West

you to send answers out"

Randolph came ... at 3:30 that

Knew on 6th that

Sands said

Did after 1st of month

CIV 4133

COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
S 10

1 Enlargement of time — denied

2. Depositions 1 Hagan
2 Michaux

~~(4) Motion~~ in IIPL +
~~Randolph Hoffman~~
~~of Attorney + Time~~

3. ~~4~~) Take Testimony in Sands "waiting
re Randolph

5) Release on IIPL

6) Costs of motion

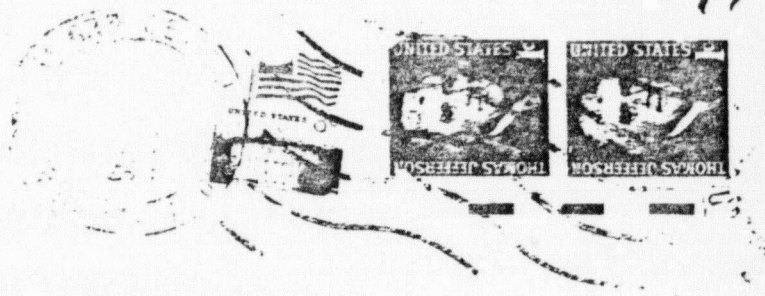
Can I depose VS IIPL witnesses are ~~found~~ Suzanne Grand.

599

/

DEFENDANT'S
EXHIBIT
U. S. Dist. Court
S. D.

T



MESSRS. ROSENMAN COLIN KAYE ET AL.

575 MADISON AVENUE

NEW YORK, N. Y. 10022

-320-

599

I.WALTON BADER
40 Morrow Avenue 7AS
Scarsdale New York

February 1st, 1975

Re: Independent Investor Protective League
vs. Teleprompter Corporation
Civil Action 74 Civil 4133 LFM

Hon. Lloyd F. MacMahon
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York NY 10007

Dear Judge MacMahon,

The undersigned is in receipt of a letter from Mr. [illegible] of the Rosenman Colin firm which implies that Your Honor was unaware of pending Rule 37 motions before Judge Owen at the time that the Court signed the Rule 41 dismissal notice with respect to the plaintiff RANDOLPH and that, if other dismissal notices are presented to Your Honor that the Rosenman Colin firm be informed of the fact.

The Court, at the time of the consolidation of these actions was well aware of the pending motion before Judge Owen since the files of all actions were before the Court at that time. Furthermore these motions were referred to at the discussion with respect to consolidation and appointment of lead counsel which took place before Your Honor.

The Notice of Voluntary Dismissal with respect to the plaintiff RANDOLPH was served upon the Rosenman Colin firm at the time that it was presented to the Court and filed with the Clerk thereof. The Rosenman Colin firm did not see fit to make any objection to the filing of this notice. Thus any implication that the Court was unaware of the facts with respect to the "ex parte" filing is simply not correct.

While the plaintiffs do not believe that it is necessary to "so order" the Notice of Voluntary Dismissal this action by the Court was in all respects proper.

BEST COPY AVAILABLE

601

Subsequent to the filing of the RANDOLPH notice the plaintiffs filed appropriate Notice of Voluntary Dismissal with respect to all of the other plaintiffs in this case, namely the INDEPENDENT INVESTOR PROTECTIVE LEAGUE, and MICHAEL and FAGAN. Copies of these notices were served upon the Rosenman Colin firm (and upon the other attorneys in this action). The Rosenman Colin firm objected to the filing of Notices of Voluntary Dismissal with respect to the plaintiffs MICHAEL and FAGAN upon the ground that, on September 20th, 1974, Judge Owen involuntarily dismissed the complaint against these plaintiffs upon the ground that interrogatory responses were not served on time. Since Judge Owen has not, to my knowledge, issued any formal order dismissing the Complaint with respect to the defendants MICHAEL and FAGAN (although he indicated such disposition on the September 20th, 1974 hearing) I would presume that Your Honor is holding these notices pending determination by Judge Owen of the motions before him.

I also would like to advise the Court that lead counsel in this case, Mr. Jones, has filed a consolidated complaint in which he does not make any claims with respect to the plaintiffs in 73 Civil 4233. Therefore, at least in the opinion of lead counsel, this action has been voluntarily dismissed with respect to all plaintiffs.

In the plaintiffs' opinion, therefore, there is no necessity to file any additional papers with Your Honor.

IWB/wb
cc: Rosenman Colin
Judge Richard Owen
Philip Jones, Esq..lead counsel

Respectfully,

I.Walton Hader

602

U.S. DISTRICT COURT
FILED
SEP 11 1974
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et. al.

Plaintiffs

against

Civil Action
73 Civil 4133
RO

TELEPROMPTER CORP. et. al.

Defendants

NOTICE OF TAKING TESTIMONY

NOTICE IS HEREBY GIVEN that the deposition of the defendant TOUCHE, ROSS & COMPANY, by its deisgnated Officer, agent and/or employee familiar with the facts, will be taken as an Adverse Party, before Trial, as provided by the Federal Rules of Civil Procedure.

NOTICE is further given that the said party is to designate the proper individual to be examined as provided by said Rules.

NOTICE is further given that the said party is to produce, on said deposition, the following books, records, and documents.

1-All work papers with respect to all audits conducted by the said TOUCHE ROSS & COMPANY of TELEPROMPTER CORPORATION which resulted in the certifications made on all financial reports of TELEPROMPTER CORPORATION by the said

603

TOUCHE ROSS & COMPANY from October 1971 to date.

2- All specific records with respect to the following matters from October 1971 to date.

a- The number of miles of cable laid by the defendant TELEPROMPTER CORPORATION.

b- The Oakland Cable TV franchise.

c- All records of cancellations by customers of service of TELEPROMPTER CORPORATION.

d- Records of contributions made by TELEPROMPTER CORPORATION to MTCA.

e- All cap talized expenses.

3- All specific records with respect to all disciplinary or any other proceedings commenced by the Securities and Exchange Commission against the defendant TOUCHE ROSS & COMPANY with respect to (1) accounting quality of work, (2) misrepresentations of audits, (3) any other matters relating to accounting.

The depositions will be taken on September 30th, 1974 at 10 o'clock in the forenoon, at the United States District Courthouse, Southern District of New York, Room 601, Foley Square, New York, N.Y. You are invited to attend and cross-examine.

NOTICE is further given that upon failure of said parties to appear as demanded we shall take the proceedings provided under the Federal Rules of Civil Procedure.

Yours, etc. 604

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, NY 10016

TO: ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
Attorneys for TOUCHE ROSS & COMPANY
575 Madison Avenue
New York NY 10022

SHEA GOULD, CLIMENKO etc.
Attorneys for defendant TELEPROMPTER CORPORATION
330 Madison Avenue
New York NY 10017

LAWLER STERLING & KENT, Esqs.
Attorneys for defendant SCHLAFLY etc.
500 Fifth Avenue
New York NY 10036

MARKEWICH ROSENHAUS, etc.
Attorneys for named defendants
350 Fifth Avenue
New York NY 10001

CERTIFICATE OF SERVICE

I hereby certify that on September 9th, 10th, 1974 I served a cop of the foregoing Notice of Taking Testimony upon all attorneys for the defendant listed above with the exception of Messrs. Rosenman Colin. Thus under penalties ofperjury pursuant to New York CPLR.

I. Walton Bader

I. Walton Bader
240 Morrow Avenue
Scarsdale New York

Attorney for Plaintiffs

U.S. DISTRICT COURT
FILED
JAN 7 1975
S.D. OF N.Y.

605

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
et. al.

Plaintiffs

against

Civil Action
73 Civil 4133
L. F. M.

TELEPROMPTER CORPORATION, et. al.

Defendants

AFFIDAVIT OF MARTIN F. RANDOLPH, JR.

STATE OF CALIFORNIA
ss:
COUNTY OF SAN DIEGO

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says:

I am one of the plaintiffs in the above-entitled action and am fully familiar with the facts set forth in this affidavit.

I reside at [redacted] 172 51st Street, San Diego, California.

At the time of the first mail delivery, in the morning of September 3rd, 1974 I received in the mail, from lawyers. BADER and [illegible], of New York City, a set of FURTHER ANSWERS TO INTERROGATORIES in the above case.

About 12 noon of that day I took these FURTHER ANSWERS to a Notary Public in San Diego California and signed the [illegible] before [illegible].

Immediately thereafter I took the signed [illegible]

I inserted these FURTHER ANSWERS into an envelope at said Post Office, addressed said envelope to BADER and BADER, 277 Madison Avenue, New York NY 10016, affixed Air Mail Postage thereto and mailed the same at the said Post Office.

The mailing was done no later than 1 PM on September 3rd, 1974.

Martin F. Randolph, Jr.

Sworn to before me
this 4th day of January 1975

Notary Public

OFFICIAL SEAL
ELIZABETH [illegible]
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
MY COMMISSION EXPIRES MAY 17, 1977

BADER & BADER Lewis v. Teleprompter

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 30 day of March 1976 deponent served the within Appendix upon:

Rosenman, Colin, etc.

attorney(s) for

Appellee

in this action, at

575 Madison Avenue
NYC

the address(es) designated by said attorney(s) for that purpose by depositing 1 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey

Sworn to before me, this 30 day of March, 1976.

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1977